

# *Town of Cutler Bay*

## Land Development Regulations

"Adopted"

**THE CORRADINO GROUP, INC.**  
Bell David Planning Group, Inc.



June 20, 2012

# Town of Cutler Bay

## CHAPTER 3

### LAND DEVELOPMENT REGULATIONS “Adopted”

June 20, 2012

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# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## Article I

### GENERAL PROVISIONS

**Sec. 3-1. Title**

This Chapter shall be entitled "Chapter 3, Land Development Regulations."

**Sec. 3-2. Authority**

These land development regulations are enacted pursuant to the requirements and authority of Sec. 163 of the Florida Statutes and the Town Charter.

**Sec. 3-3. Purpose**

The purpose of these standards is not merely to provide the minimum regulations necessary to facilitate safe and orderly growth, but to also ensure that growth forms an integral part of a community of functional neighborhoods, retail and commercial centers; increases collective security and community identity to promote civic awareness and responsibility; and enhances the quality of life for the entire Town to ensure the greatest possible economic and social benefits for all residents.

**Sec. 3-4. Intent of Land Development Regulations**

The provisions of this Chapter are intended to:

- (A) Implement and promote consistency with goals, objectives and policies of the Town's Growth Management Plan.
- (B) Foster and preserve public health, safety, comfort and welfare, and to aid in the harmonious, orderly, and progressive development of the Town in accordance with the Growth Management Plan.
- (C) Specify the duties and responsibilities of the Town in the administration of this Chapter.
- (D) Establish clear, consistent and certain regulations, procedures and development standards for obtaining development order and permitting approvals for all proposed development in the Town.
- (E) Adopt a development review process that is efficient, effective, and equitable.
- (F) Provide specific procedures to ensure that development orders and permits are

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conditioned on the availability of public facilities and services that meet level of service requirements (concurrency).

## **Sec. 3-5.           Applicability to Development**

The provisions of this Chapter shall apply to all development in the Town, unless otherwise provided for in the Town Charter. The provisions of this Chapter are not applicable to the Town. No development, except as specifically provided in this Chapter, shall be undertaken without prior authorization pursuant to this Chapter.

## **Sec. 3-6.           Rules of Interpretation**

All provisions shall be considered as minimum requirements; liberally construed in favor of the objectives and purposes of the Town; and deemed neither to limit nor repeal any other powers granted under state statutes or Town Charter. If any question arises concerning the application of regulations, performance standards, definitions, development criteria, or any other provision of this Chapter, the Director of the Department of Community Development, shall be responsible for interpretation and shall look to the Growth Management Plan for guidance.

The language used in this Chapter shall be interpreted according to the following rules.

- (A)    Computation of time. The time within which an act is to be done shall be computed by consecutive calendar days excluding Saturdays, Sundays or legal holidays (business day), unless stated otherwise.
- (B)    Delegation of authority. The Town Manager has the authority to delegate to professional level subordinates to perform the required acts or duties unless the terms of the provision or section specify otherwise.
- (C)    Number. Words in the singular shall include the plural and words in the plural shall include the singular.
- (D)    Shall, may. The word "shall" is mandatory; "may" is permissive.
- (E)    Tense. Words used in the past or present tense include the future as well as the past or present.
- (F)    Written, in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

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- (G) Year. The word "year" means a calendar year, unless otherwise indicated.
- (H) Day. The word "day" means a calendar day, unless a business day is indicated.
- (I) Boundaries. Interpretations regarding boundaries of zoning districts shall be made in accordance with the following:
1. Boundaries shown following or approximately following any street shall be construed as following the centerline of the street.
  2. Boundaries shown following or approximately following any platted lot line or other property line shall be construed as following such line.
  3. Boundaries shown following or approximately following section lines, half-section lines, or quarter-section lines shall be construed as following such lines.
- (J) Person. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- (K) Lot. The word "lot" includes the word "plot" or "parcel" or "tract".
- (L) Structures. The word "structure" includes the word "building".
- (M) District or Zoning Map. The word "District Map," or "Zoning Map," means the "Official Zoning District Map".
- (N) Town Council. The term "Town Council" means the "Town Council of the Town".
- (O) Department. The term "Department" means the "Department of Community Development".
- (P) Ordinance/Code/Land Development Code. The terms "Ordinance", "Code", and "Land Development Code" are synonymous and refer to the "Town of Cutler Bay Land Development Regulations".

## **Sec. 3-7. Deed Restrictions**

No public agency shall be responsible for enforcing any private deed restriction or restrictive covenants.

## **Sec. 3-8. Form of Ownership**

These regulations shall be construed and applied with reference to the nature of the use of such property and without regard to the form of ownership.

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## **Sec. 3-9. Official Zoning District Map**

The Town's Official Zoning District Map (Exhibit I), as amended from time to time, is established and incorporated as part of these regulations. The Official Zoning District Map delineates the boundaries of all Zoning Districts as adopted by the Town Council, as amended from time to time, and shall be kept on file with the Director of the Department of Community Development.

## **Sec. 3-10. Changes, Amendments, or Supplements**

All changes, amendments, or supplements to this Chapter and to the Zoning District Map shall be adopted in accordance with the provisions of this Chapter, the Growth Management Plan, and applicable state law.

## **Sec. 3-11. Nonconforming Development**

It is the purpose and intent of this section to provide procedures whereby lawful nonconforming structures and uses may be maintained where such maintenance will not have a detrimental effect upon other persons or property within the vicinity, and in so doing to bring such uses and structures up to present standards to the maximum possible extent.

(A) Abandonment/Discontinuation. For purposes of this section, a nonconforming use shall be considered abandoned or having ceased when discontinued for a period of 90 calendar days or more as indicated by any of the following:

1. Allowing business tax receipt or certificate of use to lapse;
2. Removing meters;
3. Not maintaining structure in a compliant condition;
4. Not making unit available for occupation (i.e., advertising or marketing through a realtor or other agent);
5. Failure to perform actions pursuant to the terms of an active building permit;
- or
6. Failure to occupy the site.

(B) Nonconforming use of a conforming building. The lawful nonconforming use of a building may be continued, although such use does not conform to the regulations of an applicable zoning district within which the building is located. Any such use shall only be changed to a permitted use. A nonconforming use shall not be expanded. If the nonconforming use is discontinued, any further use of said building shall conform to the regulations of the applicable zoning district.

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- (C) Conforming use of a nonconforming building. A lawful nonconforming building may be utilized for any use that conforms to the regulations of the applicable zoning district within which the building is located. Structural alterations may only be made when they do not increase the degree of nonconformity of the building, but are discouraged.
- (D) Nonconforming use of a nonconforming building. The lawful nonconforming use of a lawful nonconforming building may be continued although such use and building do not conform to the regulations of the applicable zoning district within which the building is located. However, neither the use nor the building shall be expanded. If the nonconforming use is abandoned, any further use of said building shall conform to the regulations of the applicable zoning district.
- (E) Nonconforming use of land. The lawful nonconforming use of land may be continued although such use does not conform to the regulations of the applicable zoning district within which the land is located. However, no such use shall be enlarged, intensified or extended to occupy a greater area of land, nor shall the use be reinstated following abandonment.
- (F) Nonconforming accessory use or accessory building. A nonconforming accessory use or accessory building may be expanded only if the nonconforming features of that use or structure are not expanded so as to increase the degree of nonconformity. No nonconforming accessory use or accessory building shall continue after the principal use or building is terminated by abandonment, damage, or destruction, unless such accessory use or accessory building thereafter is made to conform to the standards for the zoning district in which it is located. No nonconforming accessory use or building shall become or replace any terminated principal nonconforming use or building.
- (G) Maintenance, repairs and renovations. Normal structural repairs, maintenance and renovations may be performed to allow the continuation of a nonconforming building. However, such cumulative work in any 12-month period shall not exceed 40 percent of the assessed value of such building. Assessed value for purposes of this section shall be determined by using the current assessed value as provided by the Property Appraiser's Office.

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- (H) Compliance with regulations. Nothing in this section shall diminish the responsibility of an owner to maintain his use or structure in full compliance with all other town, county, state or federal regulations or licensing procedures.
- (I) Establishment of nonconformity. For the purpose of this section, the mere possession of a valid approval to use land or buildings or valid license to do so without actual demonstrable use of such land or structure is an insufficient basis to establish lawful nonconformity.
- (J) Special provisions for specific nonconformities.
  - 1. Nonconformity with stormwater management requirements. An existing development that does not currently comply must be brought into full compliance with the stormwater management requirements of the Town when the use is changed, intensified or the density or intensity of the development is increased, resulting in a potential increase in stormwater runoff or potential added concentration of pollutants in the runoff.
  - 2. Nonconformity with parking and loading requirements. Full compliance with this Chapter shall be required where the seating capacity or other factors controlling the number of parking or loading spaces required is increased by ten percent or more.
  - 3. Nonconforming signs. Signs or sign structures made legally nonconforming under this Chapter shall be governed by Article VIII.

### **Sec. 3-12. Substandard Single-Family Lots**

Any lot in a single-family residential district, platted prior to the adoption of this Code shall not be deemed a non-conforming lot for purposes of minimum lot size, and shall be permitted to be developed in accordance with the applicable zoning district regulations where the lot is located.

### **Sec. 3-13. Commercial Principal Use**

Only one (1) principal use shall be permitted per establishment, unless determined by the Director to be similar uses.

### **Sec. 3-14. Violation of Permit Condition or Time Limitation**

- (A) A violation of any condition or time limitation of any resolution, development permit or approval shall be considered a violation of this Chapter. The violation shall be corrected prior to any public hearing or meeting on the issuance of any subsequent development

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permit or approval for that project, unless a subsequent application seeks to amend the condition or time limitation that has been violated. Unless otherwise specified in the resolution, development permit, or approval, an approved use must comply with conditions and time limitations before implementation of the approval, or before receipt of a certificate of occupancy or certificate of completion.

- (B) In the event of any condition imposed by the Town Council, the Council may revoke the resolution or ordinance imposing such condition after a duly noticed public hearing. For purposes of this section published notice shall be provided seven (7) days before the Town Council Public Hearing.

### **Sec. 3-15. Vested Rights**

Unless otherwise permitted as an exception under (A) below or allowed to continue as a non-conforming use under Section 3-11, all existing, proposed and new development or redevelopment and uses of land in the Town shall conform strictly to the provisions of these Land Development Regulations. Except as expressly provided in these land development regulations, no development and use of land shall be undertaken without prior approval and issuance of a development order pursuant to these land development regulations. The fact that a development order, permit or decision has been issued shall not stop or otherwise prevent the Town from strict enforcement of the provisions of these land development regulations.

- (A) Exceptions, vested rights. The provisions of these Land Development Regulations and any amendments hereto, shall not affect development that has a valid County, Town Council or Director's approval before adoption of these regulations, or is otherwise exempted in accordance with this section or nonconforming development, Section 3-11, of these Land Development Regulations.

- I. Nothing in these zoning regulations shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:

- (a) A governmental act of development approval was obtained prior to the effective date of these Land Development Regulations or prior to the effective date of an amendment to these Land Development Regulations; and
- (b) The property owner has detrimentally relied, in good

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faith, by making substantial expenditures subsequent to and based upon the governmental act of development approval; and

- (c) It would be highly inequitable to deny the property owner the right to complete the development.

2. Except as provided in 3 below, any property owner claiming to have vested rights under this section must file an application with the Town Manager or his/her designee for a vested rights determination within 120 calendar days after the initial effective date of this section (as to any claim of vested rights prior to initial adoption) or within 120 calendar days after an amendment of these Land Development Regulations (as to any claim of vested rights arising after the initial adoption of these land development regulations and prior to the amendment). The application shall contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall review the application and, based upon the evidence submitted, shall make a written determination as to whether the property owner has established vested rights.
3. Any property owner claiming to have vested rights under this section, by virtue of: (a) A court judgment rendered by a court of competent jurisdiction; or (b) vested rights determination by Miami-Dade County; or (c) Florida Department of Economic Opportunity, Division of Community Development vested rights determination may follow a simplified procedure authorized by this subsection in lieu of the procedure provided above. The simplified procedure under this subsection shall be as follows:

The property owner claiming vested rights shall file an application with the Town Manager or his/her designee for a vested rights determination within 120 calendar days after the effective date of this section. The application shall contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation of the applicable qualifying items above. The Town Manager shall review the application, and based upon the evidence submitted shall make a written determination as to whether the property owner has established vested rights. Vested rights pursuant to the criteria of this section shall be presumed to exist, upon submittal of the qualifying items, unless clear and convincing evidence shows that vested



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rights have been waived, have expired or are not applicable, in whole or in part.

4. The provisions of these Land Development Regulations shall not affect development for which a building permit has been issued on or before the effective date of the initial adoption of this section, provided that such building permit was lawfully issued and remains in full force and effect and the approval has not expired. Upon completion of such development, the development thenceforth will be subject to the provisions of these Land Development Regulations.

## **Sec. 3-16. Accessory Uses and Structures**

Accessory uses are permitted in all districts when the use and/or structure is customarily incidental and subordinate to the permitted use as determined by the Director. In addition, Home-based Public Assembly uses are permitted as accessory uses in residential districts.

## **Sec. 3-17. Certificate of Use**

- (A) No structure, other than a single family residence or duplex, shall be used or any existing use enlarged, or any new use made of any land , body of water, or structure, without first obtaining a Certificate of Use (C.U.) therefore from the Department. Said C.U. shall be required for each individual business and each multi-family building located within the Town of Cutler Bay.
- (B) In the event there is a question as to the legality of a use, the Director may require inspections, affidavits and such other information he/she may deem appropriate or necessary to establish the legality of the use, before a C.U. will be issued. Additionally, the Department shall have the right to periodically inspect premises at any reasonable time to ensure the existence of a current and valid C.U., and to ensure compliance with the terms and conditions under which a C.U. was issued.

Except for C.U.'s required by the Code or zoning resolution to be renewed annually, and except for C.U.'s issued on a temporary basis, certificates of use shall remain valid for an unlimited time unless revoked for cause. The C.U. is only valid for the specific address, business name, corporate name and type of business for which it was issued. A new C.U. shall be required for any changes in; use, name, ownership, expansion of square footage occupied, the inclusion of additional uses, or when changes to the structure have been approved by final building inspection.

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No C.U. shall be utilized in a manner contrary to the regulations contained in this Section.

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## Article II

### ADMINISTRATIVE PROVISIONS

**Sec. 3-20. Purpose and Authority**

This Article sets forth the duties and responsibilities of the agencies described herein.

**Sec. 3-21. Town Council**

Pursuant to the authority granted to the Town Council by state law or by provisions of the Town Charter, the Town Council shall have the following duties and responsibilities listed herein concerning these Land Development Regulations. The Town Council's authority shall include, but not be limited to, approval, approval with conditions or modifications, or denial.

**Sec. 3-22. Local Planning Agency**

- (A) The Town Council is designated the Local Planning Agency (LPA) for the Town.
- (B) The LPA shall have all the powers authorized under Section 163.3174, Florida Statutes.
- (C) A representative of the School Board of Miami-Dade County shall be entitled to sit as a non-voting member of the LPA when the agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application. The School Board representative shall not be counted when determining the presence of a quorum.

**Sec. 3-23. Department of Community Development**

The Department of Community Development shall have the duty and responsibility to determine, interpret and enforce all sections of the Land Development Regulations. The Department shall promote, protect, and improve the health, safety, and welfare of the citizens of the Town by providing an equitable, expeditious and effective method of enforcing this Chapter.

## Article III

### APPLICATION REVIEW AND APPROVAL REQUIREMENTS

#### Sec. 3-30. General Requirements for Applications

Applications required under this Article must be submitted in a form and in such numbers as specified below. Application forms and checklists of required submittal information are available from the Department of Community Development.

- A. Pre-Application Conference. A pre-application conference may be required, at the discretion of the Department Director or granted at the request of the applicant. Applicants are encouraged to schedule and attend a pre-application meeting with the appropriate Community Development Department staff prior to submitting an application for review under this Article. The purpose of a pre-application conference is to inform the applicant of review procedures, submittal requirements, development standards, and other pertinent matters before the applicant finalizes the development proposal. Staff opinions presented during a pre-application meeting are informational only and do not represent a commitment on behalf of the Town regarding the acceptability of the development proposal.
- B. Application Filing Fee. Applications must be accompanied by the fee that has been established by the Town Council. Fees are not required with applications initiated by the Town Council or an advisory board of the Town. Unless otherwise expressly stated in this Article, application fees are nonrefundable.
- C. Application Completeness and Accuracy. An application will be considered complete by the Department if it is submitted in the required number and form, includes all mandatory information, is accompanied by the applicable fee, and all information material to the application is accurate. This provision does not preclude the identification and correction of information submitted by the applicant after an application is accepted.
- D. Acceptance for Processing. Determination of application completeness shall be made by the Department within thirty (30) business days of a complete application filing. If an application is determined to be incomplete, the Department shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. The deficiencies must be addressed by the applicant in writing within thirty (30) business days of the date of the deficiency notice provided by the Town. If all of the deficiencies

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are not resolved, the application shall be considered withdrawn. The Director shall provide in writing to the applicant that the application is either complete or withdrawn.

- E. Burden of Proof or Persuasion. In all cases, the applicant shall have the burden of establishing that an application complies with applicable approval criteria. An application shall not create any nonconforming circumstances.
- F. Zoning Workshop. A Zoning Workshop shall be held no fewer than thirty (30) calendar days prior to the first Town Council meeting at which the application will be heard. A zoning workshop shall be required for site plan applications and site plan amendments which seek to develop additional square footage and any that require Town Council approval.
- G. Official Review. In conducting required reviews, the Department shall be authorized to distribute the application and other submittals to other departments and agencies for the purpose of soliciting comments and ensuring that the proposal complies with all applicable standards and requirements.
- H. Development Order Modification. After a final development order has been issued, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the permit without first obtaining a modification to the development order. A written record of the modification shall be made a part of the original final development order and maintained in the files of the Town.
- I. Cost Recovery. To the extent that any application for review by the Town under the Town's Land Development Regulations or, except as otherwise specified below, other Town Code provisions which require review by Town staff, Town contractors, agents or consultants, the actual full costs for such review shall be passed on to the applicant. Costs for the Town Attorney and/or any outside contractors, agents or consultants of the Town shall be charged to the applicant in an amount equal to the actual cost charged to the Town.
  - 1. Fees charged to process building permits and other development applications on behalf of the Town shall not be affected by this section.
  - 2. Unless prohibited by law, in circumstances in which the Town prepares closing papers, deeds, or other documents in conjunction with Town programs such as in-fill lot housing or other housing measures, or for other matters in which the Town holds a lien and is requested to subordinate its position; and, in cases where the Town prepares loan documents, liens, mortgage papers,

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subordination documents and other such documents in conjunction with or resulting from Town loan and economic development programs, the Town shall charge the applicant a reasonable fee as determined by the Town Manager in an amount equal to the actual full costs to the Town for the preparation of such documents.

- J. Commencement of Development. Site improvements shall be developed prior to or concurrently with the commencement of construction. Such improvements include, but are not limited to: road and drainage improvements, excavation, grading and leveling, installation of utilities, and other infrastructure.

A site plan shall be valid only if a building permit for a principal building has been issued within one year of the administrative or Town Council approval of said site plan, whichever is applicable. For good cause shown, an applicant may apply for an extension of time prior to the expiration of the 12-month period. Such extension of time shall be granted administratively and shall not exceed a total of eighteen (18) months with a maximum of two (2) extensions. This means that the timeframe for each extension will be nine (9) months.

If development is permitted in phases, a phasing plan shall be required and subsequent phases shall commence within 12 months after the completion of the previous phase.

- I. If subsequent phases are not commenced within the 12-month period, the approval shall be null and void and reapplication to the Town shall be required for the remaining phases. Phases may be developed out of sequence if good cause is shown and prior approval by the Department is granted, and determined not be to the detriment of the preceding phase(s).

- K. Advertising and notice requirements. Upon determination of a complete application, the Town shall fix a date, time, and place for a public hearing/s and publish notice of such hearing/s in the following manner. Each notice shall adequately describe the property along with the intent and purpose for the application and where additional information on the matter may be obtained.

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Advertising requirements. The Town shall advertise in accordance with the provisions set forth below:

<u>Development Application and Type of Meeting</u>	<u>Type of Advertisement Required</u>
Comprehensive Plan (Growth Management Plan) Amendments	As required by state law for the Town Council Meeting.
Rezoning	As required by state law for the Town Council Meeting.
Development of Regional Impact	As required by state law for the Town Council Meeting.
Any other development application not mentioned above which requires a public hearing	An advertisement shall be published in the non-legal section of a local newspaper selected by the Town at least seven (7) calendar days before the Town Council public hearing.
Zoning Workshops	An advertisement shall be published in the non-legal section of a local newspaper selected by the Town at least seven (7) calendar days before the Zoning Workshop meeting.
Local Planning Agency (LPA)	As required by state law for the LPA Meeting.
Administrative Variance	An advertisement shall be published in the non-legal section of a local newspaper selected by the Town at least ten (10) calendar days after the Director's decision.

- I. Posted notice. A sign shall be prepared and posted on the subject property by the Town setting forth a notice of public hearing at least five (5) business days before the Town Council meeting in which the item is scheduled to be heard. This notice shall remain posted on the subject property through the date of the public hearing and shall be removed within ten (10) business days following the Town Council's approval or denial of the application, or upon the application's withdrawal.
2. Courtesy mailed notice. Property owners of record within a 1000-foot radius of the subject property scheduled for a zoning workshop and public hearing before the Town Council shall be mailed a courtesy notice. The failure to mail or

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receive such courtesy notice shall not affect any action or proceedings taken by the Town Council.

3. Advertising and notice costs. Unless specifically directed by the Town Council, the Town shall provide the least expensive publication that is legally sufficient and when applicable, multiple applications shall be combined into one (1) advertisement. All costs of required advertising, noticing, and posting shall be borne by the applicant.

L. Withdrawal of Development Applications and Refund of Fees. An application for development review may be withdrawn at any time. For applications filed in accordance with this Chapter and subsequently withdrawn, the applicant may request a fee refund. The refund request must be made on a form provided by the Town. The amount of refund will be based on the point in time of the review process when the application withdrawal is initiated by the applicant. The refund schedule is as follows:

1. 75 percent prior to staff review or legal advertisement (whichever comes first).
2. 25 percent prior to drafting of the staff report.
3. 15 percent ten (10) business days prior to the Town Council hearing on the application.
4. No refund shall be granted if an applicant withdraws the application at the Town Council meeting in which the application is scheduled to be heard.

M. Appeal.

1. Administrative Appeal. Any person aggrieved by an action of the Department in granting, denying or revoking an administrative decision may appeal the decision to the Town Council within thirty (30) days of the decision. Such appeal shall be filed on a form provided by the Department, and which shall include the applicable fee.

In the case of an appeal from the revocation of a temporary use permit, the aggrieved party may first request a meeting with the Department. Within five (5) business days of the meeting, the Department shall inform the aggrieved person, in writing, of the decision to affirm, modify, or rescind revocation of the permit.

2. Appeal of Town Council Decision. Any person aggrieved by a decision of the Town Council may appeal said decision to a court of competent jurisdiction.



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- N. Withdrawal of Appeal. An appeal to the Town Council may be withdrawn by the applicant at any time prior to the deadline of cancellation of the newspaper advertisement for the public hearing on the application; after this deadline an appeal may be withdrawn only with the permission of the Town Council.
- O. Request for Waivers/Modifications of Submittal Requirements. Any submittal requirements may be waived by the Department Director. The applicant must clearly indicate by section and paragraph in the application and in a letter attached to the application, which waiver or modification is requested. To grant a waiver or modification the Department must determine that a requirement is not necessary for the full and adequate consideration of the application. The Department shall set forth in writing the reasons for such determination.
- P. Re-Application. If a development application is denied by the Town Council on its merits, no application substantially requesting the same relief with respect to all or part of the same property shall be considered by the Town within twelve (12) months after the date of such denial. This re-application requirement may be waived by a majority vote of the Town Council. The Director shall determine whether the re-application is substantially requesting the same relief.

### **Sec. 3-31. Appeal of Administrative Decision**

Any person or persons claiming to be aggrieved on account of any ruling by the Director charged with enforcing the land development regulations may appeal to the Town Council.

- A. Application Filing. The filing of a complete application for appeal from the Director's ruling shall stay all proceedings and all work on the premises involved unless such stay shall be deemed to imperil life or property. In such cases, proceedings or work shall not be stayed except by an order granted by the Town Council or by a court of competent jurisdiction if the same shall have been refused by the Town Council.
- B. Record of Administrative Decision. Upon acceptance of a complete application the Director shall transmit to the Town Council all papers or other records upon which the action or decision appealed was taken.
- C. Public Hearing by the Town Council. The Town Council shall hold a public hearing, and may reverse or affirm, wholly or partly, or may modify the Director's decision regarding the application.
- D. Approval Criteria. An appeal shall be sustained only if the Town Council finds that the

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Director erred. The decision of the Town Council shall be by resolution. The Director shall serve a copy of the decision on the applicant and upon each other person who was a party of record at the hearing.

### **Sec. 3-32. Zoning Workshop**

It is the intent of the Zoning Workshop process to provide an open forum for members of the public and Town Council to comment on proposed site plans that required a public hearing within the Town. The Zoning Workshop shall not be considered part of the quasi-judicial hearing. Each application shall be evaluated based upon the record presented at the Town Council hearing(s) on the application.

- A. Meeting Procedure. A Zoning Workshop shall consist of two (2) sessions.
  - 1. First Session. The first session shall provide a forum for members of the public to learn about proposed developments within the Town. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the Town Council may be present during the first session of the Zoning Workshop but may not participate in the discussion.
  - 2. Second Session. The second session shall provide a forum for the Town Council to learn about the proposed developments discussed at the first session of the Zoning Workshop. No quorum requirement shall apply. Developments shall be presented by the applicants sequentially, one at a time, for the Town Council's review and comment. In addition, the applicant shall be available to answer any questions that members of the Town Council may have about the proposed development.
- B. Meeting Submissions. The applicant shall bring a color rendering of the building(s) and a board depicting the elevations of all sides of the building(s) along with a site plan and any other visual materials the applicant finds as expressive of their project to the Workshop. These items must be set upon easel(s) in the meeting room by the applicant at least fifteen (15) minutes prior to the Workshop.

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## **Sec. 3-33. Site Plan Application**

Applications for Site Plan review shall require the submission of a site plan package in accordance with the provisions of this Article. Site plan approval by the Town Council, after a public hearing, shall be required for all development within the Town. Notwithstanding the above, development within the Town Center District and the construction of one single-family residence shall be subject to administrative site plan review and approval. No certificate(s) of occupancy shall be issued for any building or buildings unless all facilities included in the approved site plan have been provided. The Director may, if in his opinion it is deemed necessary, retain consultants to assist in the review of an application for site plan approval.

- A. Procedure. An application for site plan review shall be made to the Director prior to an application for a building permit and will only be accepted if all other ordinances and provisions of the Town have been complied with. Except as may otherwise be required by law or administrative procedures, all required county, regional, state, or federal agency approvals shall be obtained prior to site plan approval.
- B. Approval Criteria. The Town Council shall use the following criteria in making their decision regarding approval or disapproval of a site plan application:
  - 1. The development permitted by the application, if granted, conforms to the Growth Management Plan; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered.
  - 2. The development permitted by the application, if granted, will have a favorable impact on the environmental and natural resources of the Town of Cutler Bay, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment, and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development.
  - 3. The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of the Town.
  - 4. The development permitted by the application, if granted, will efficiently use or not unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction.
  - 5. The development permitted by the application, if granted, will efficiently use or

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not unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

C. Plan Submission and Review. Any application for site plan approval shall include the following information:

1. The location and size of the site, including its legal description and a current certified survey (less than six (6) months old).
2. The recorded ownership interests including liens and encumbrances and the nature of the developer's interest if the developer is not the owner.
3. The relationship of the site to existing development in the area including streets, utilities, residential and commercial development, and physical features of the land including pertinent ecological structures within 100 feet.
4. The density or intensity of land use to be allocated, all parts of the site to be developed, together with tabulations by acreage and percentage thereof.
5. The location, size, and character of any common open space and the form of organization proposed to own and maintain any common open space.
6. The use and the number of stories, height, bulk, and location of all buildings and other structures.
7. The requirements as set forth in this Chapter and other Chapters, including the necessary documentation for providing required improvements such as streets, water supply, storm drainage, parking, landscaping, and sewage collection as well as the provisions for all other appropriate public and private services such as police or security protection, fire protection, and refuse collection.
8. The substance of covenants, grants of easements, or other restrictions proposed to be imposed upon the use of the land, buildings, and structures including proposed easements or grants for public utilities.
9. In the case of plans which call for development over a period of years, a phasing schedule showing the approximate times within which applications for building permits are intended to be filed.
10. Any additional data, plans, or specifications which the applicant believes is pertinent and will assist in clarifying his application.
11. A demonstration that the proposed development does not degrade adopted levels of service in the Town.
12. Architectural elevations for buildings in the development; exact number of dwelling units, sizes and types.

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13. Plans for signs, if any.
14. Landscaping plan, including types, sizes and locations of vegetation and decorative shrubbery, and showing provisions for irrigation and maintenance.
15. Color renderings and elevations.
16. Photometrics
17. Additional data, maps, plans, surveys or statements as may be required for the particular use or activity involved.

D. Development Agency Review. Upon acceptance of a site plan application, the Director shall forward a copy of the application and accompanying material to each of the following disciplines for review, as applicable. The applicant shall obtain applicable County and State approval prior to scheduling of public hearing.

1. Engineering
2. Traffic
3. Public Works
4. Utilities, as may be deemed necessary
5. Landscaping
6. Survey
7. Solid Waste
8. Any other agency, as deemed applicable by the Director

If requested by the Director, each reviewing discipline shall prepare a staff report with written comments and shall forward such staff report to the Director. The Director shall make a written finding that the site plan has or has not met the standards of this Code.

### **Sec. 3-34. Site Plan Modification**

The Director is authorized to consider and approve minor modifications to previously approved site plans which do not exceed the thresholds established under Sub-section A. A letter of intent shall be submitted as part of the Minor Modification application. A minor site plan modification does not require Town Council action or hearing.

A. Minor Modification Determination. A minor modification must demonstrate the following, as applicable:

- I. The number of buildings, number of stories, height, and number of units is the same or fewer.

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2. Lot coverage and/or floor area ratio have not increased or decreased by more than 5 percent.
3. The number of bedrooms and corresponding parking spaces may increase or decrease by as much as five 5 percent, provided the plan complies with all other requirements of this subsection and of this Chapter.
4. Density or intensity (floor area ratio) may be transferred from one stage of development to another, provided that the total floor area ratio is not changed and the floor area ratio for each stage is not increased or decreased by more than 5 percent.
5. Roadway patterns, including ingress-egress points, are in the same general location as shown on the original plans, and are no closer to the rear or interior side property lines than shown on the original plans.
6. Parking is in the same general location and configuration.
7. The building setbacks are the same or greater distance from perimeter property lines.
8. The landscaped open space is in the same general location, is of the same or greater amount, and is configured in a manner that does not diminish a previously intended buffering effect.
9. The proposed perimeter walls and/or fences are in the same general location and of a comparable type and design as previously approved.
10. Elevations and renderings of buildings have substantially similar architectural expressions as those shown on the approved plans.
11. Recreational facilities, if shown on plans approved by a prior action, either remain the same or are converted from one recreational use to another.
12. If recreational facilities were not shown in the approved plans, they may be added, provided there is no net increase in lot coverage or net decrease in required non-recreational open space and such facilities are located internally within the proposed development.
13. The proposed changes do not have the effect of creating any noncompliance or nonconformity with the strict application of the land development regulations that were not previously approved at public hearing, or of expanding the scope of existing variances, or other approvals such that they would differ to a greater degree from the strict application of the land development regulations.
14. Additional out parcels may be added where there is no net increase in the project's total floor area ratio or lot coverage, there is no net reduction in the total amount of landscaped open space, and addition of the out parcel does not

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result in noncompliance with any other provision of this subsection on any other portion of the subject property.

15. Reductions in the number of parking spaces on the site are permitted if sufficient parking spaces are provided to satisfy the requirements of this Code. An approved parking management plan is required for the Town to consider reduction in the number of parking spaces.
16. May not be contrary or modify a condition of approval or any previously approved amendment.
17. The proposed changes do not result in an increase in stormwater runoff.

### **Sec. 3-35. Temporary Use Permit**

Any person desiring to establish a temporary use, as further described in Article XI of this Chapter, shall submit an application for a temporary use to the Department on an application provided by the Town. The applicant must submit proof of ownership of the property or present evidence to show approval of the property owner for the use requested.

- A. Issuance or Denial of Permit. If the Department finds that the application complies with the standards set forth in this Code and other applicable provisions of law, the Department shall issue a temporary use permit, setting forth the duration of the permit and such conditions as will protect the health, safety, and welfare of the public and nearby property owners. Otherwise, the Department shall deny the application.
- B. Termination. At the end of the time period for which the temporary use was permitted, including any renewal or extension periods, the use shall be discontinued, and all temporary structures and signs shall be removed within five (5) business days.
- C. Renewals, Extensions. Requests for the renewal or extension of a temporary use permit shall be made to the Department. The procedure for the renewal of a temporary use permit shall be the same as specified in this Article for the approval of the original temporary use permit.
- D. Revocation of Permit. The Department may revoke a temporary use permit at any time upon the failure of the owner or operator to observe all requirements of the permit, this Article, and other relevant provisions of law, including failure to obtain appropriate business licenses. Notice of such revocation shall be given in writing by the Director to the owner or operator of the use, by hand-delivery or certified mail, setting forth the reasons for the revocation, the date and time upon which the revocation is effective, and the appeals procedure. This provision shall not preclude the use of any other

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remedy prescribed by law with respect to violations of the provisions of this Chapter.

## **Sec. 3-36. Variance**

Owners of lands or structures may apply to the Town Council for a variance from the requirements or restrictions of the Land Development Regulations; except that no variance for use or density issues shall be considered. Variances shall be submitted in writing through the Department, stating the specific variance(s) requested. Each variance of a code requirement necessitates a separate variance application and process. The Town Council, after a public hearing, may approve, approve with conditions or deny the application.

A. Application. An application for a variance shall include a written statement by the applicant with supporting explanation and evidence regarding the following requirements:

1. The particular provision of the Code which prevents the proposed construction on, or use of the property.
2. The existing zoning of the property, including any previously approved conditions, or modifications.
3. The special circumstances, conditions or characteristics of the land, building or structure that prevent the use of the land in compliance with the terms of this ordinance.
4. The particular hardship that would result if the specified provisions of the ordinance were to be applied to the subject property.
5. The extent to which it would be necessary to vary the provisions of this ordinance in order to permit the proposed construction on, or use of, the property.
6. A disclosure statement by the parties with at least 5 percent interest in the project shall be signed by the applicant and notarized.

B. Approval Standards. The applicant shall have the burden of proof and provide a written statement describing the manner and degree of compliance with the following standards:

1. The variance will result in conditions that maintain and are consistent in all material respects with the intent and purpose of these Regulations, and that the general welfare, stability and appearance of the community will be protected and maintained.
2. The variance will be compatible with the surrounding land uses, and otherwise consistent with these Regulations and the Comprehensive Plan, and will not be detrimental to the community.



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3. That the request for a variance is not based on an economic disadvantage to the owner or occupant of the property upon which the variance is sought.

### **Sec. 3-37. Administrative Adjustment Procedures**

The purpose of this section is to provide a procedure by administrative decision for certain residential property to obtain minor administrative variances to the setback, lot coverage and building spacing requirements specified in the underlying zoning district regulations. This section shall only apply to owners in single-family, duplex and townhouse residences and accessory residential uses.

#### **(A) Administrative Adjustment Limitations and Exclusions.**

1. Administrative adjustment approvals shall be limited to those lots within an area where at least 75 percent of the lots within approximately 300 feet, have already been developed or platted.
2. A setback shall not be adjusted below 25 percent of that required by the underlying district regulations.
3. Lot coverage for a principal and/or accessory structure shall not be increased by more than ten (10) percent of that required by the underlying district regulations.
4. Spacing between structures on the same lot may be reduced; provided, however, in no event shall such spacing be less than five (5) feet.
5. Unless specifically permitted by the underlying zoning regulations, no accessory building shall be placed in front of the front building line of the principal building.
6. Under this section, no application shall be made for nor shall approval be granted for an adjustment to canopy carport regulations.

- (B) Consent and Notice.** Except as otherwise provided in this subsection, the application shall be accompanied by the signed consent of all contiguous property owners, including those located across the street(s) from the subject site, shall be submitted by the applicant on a form prescribed by the Director, and on the site plan submitted for consideration. Said consent shall not be required when a separating public right-of-way measures seventy (70) feet or greater, nor shall consent be required when a body of water completely separates the subject parcel from another parcel.

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If the applicant for an administrative adjustment is unable to obtain either the signed consent or objection of a neighboring property owner, the signed consent of that owner shall not be required when the following conditions have been met:

- I. Written notice of the request for administrative adjustment is provided to the neighboring property owner and proof that a notice has been sent shall be provided to the Department.
- (C) Inspection. Upon receipt of the application for an administrative adjustment, the Director, prior to making a decision, may have a staff member inspect the site of the subject property and the surrounding properties to determine what impact, if any, the proposed administrative adjustment will have on the adjoining lots.
- (D) Review Standards. The following standards shall be applied in considering an administrative adjustment:
- I. No more than two sides of the encroaching construction shall be considered for a setback adjustment (all prior setback variances, administrative adjustments and alternative site development options shall count toward this limitation).
  2. No prior setback, lot coverage or building spacing variance(s), administrative adjustment(s) or alternative site development option(s) shall be further changed by administrative adjustment.
  3. The architectural design, scale, mass, and building materials of any proposed structure or addition shall be aesthetically harmonious with that of other existing or proposed structures or buildings on the property.
  4. The plan shall clearly illustrate water runoff solution(s) for the encroaching construction area.
  5. The property owner shall certify in writing that any and all easement areas as shown on the recorded plat remain unencumbered by the encroaching construction, unless a release of interest by the easement holder(s) is obtained and submitted prior to permit issuance.
  6. The applicant provide written certification from a registered architect or engineer that the existing encroaching construction complies, or can be made to comply with all applicable construction codes, including but not limited to the Florida Building Code, the applicable Fire Prevention Code and other zoning regulations.
  7. Any reduction in the spacing requirement between a principal building and an accessory building or structure on the same lot shall not result

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in a situation that causes maintenance difficulty or an unsightly appearance.

8. The proposed accessory building or structure is a normal and customary accessory residential use.
9. The property owner certifies in writing that the type and placement of any proposed outdoor lighting fixtures shall comply with the Town Code and the Florida Building Code.
10. Notwithstanding the foregoing, no proposed administrative adjustment shall be approved where the Director determines that the proposed construction or addition:
  - a. Will not be in harmony with the general appearance and character of the subject block face or the block face across the street from the subject property or will result in a significant diminution of value of the adjacent property; or
  - b. Will be detrimental to the public welfare in that it will have substantial negative impact on public safety due to unsafe traffic movements, heightened pedestrian- vehicular conflicts, or heightened risk of fire; or
  - c. Creates materially greater adverse privacy impacts on adjacent residences than that permitted by the underlying district regulations.

(E) Conditions and Safeguards. In granting an administrative adjustment, the Director may prescribe conditions and safeguards deemed necessary to protect the interests served by the underlying zoning district regulations, including, but not limited to:

1. Landscape materials, walls, and fences as required buffering.
2. Modification of the orientation or deletion of any openings.
3. Modification of site arrangements.
4. Modification of plans.

(F) Advertising. After the Director's decision, an advertisement shall be published pursuant to Sec. 3-30(K).

### **Sec. 3-38 Rezoning**

The Town Council may rezone property, in conformity with the provisions of this section. Rezones may be initiated by the Town, petition of the owner or owner's agent, or contract purchaser with the owner's written consent, which is the subject of the proposed map amendment.

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- A. Application Filing. All rezoning applications shall be filed with the Department of Community Development. The required application form must be completed and signed by the applicant and owner(s) of the property or their designated agent. Upon acceptance of a completed application, the application shall be forwarded to all appropriate reviewing agencies for comment.
- B. Submittal Requirements. All rezoning applications shall be accompanied by the following items:
1. An application, on a form provided by the Town, completed and signed by the applicant and owner(s) of the property or their designated agent.
  2. A disclosure statement by the parties with at least 5 percent interest in the project signed by the applicant and notarized. The applicant shall keep this information current at all times during the processing of the application.
  3. An as-built survey, signed and sealed by a certified surveyor and mapper, completed not longer than six (6) months in advance of the date of the application, that contains the following information:
    - a. Boundaries of the entire property, with bearings and distances of the perimeter property lines and of each existing and proposed land use classifications.
    - b. Total area of the property and of each existing and proposed district classification presented in square feet and acres.
    - c. Scale and north arrow, with north, to the extent feasible, oriented to the top of the survey.
    - d. Location of all existing buildings and structures.
    - e. Names of all boundary roads or streets, and the width of existing rights-of-way.
- C. Public Hearing. The Town Council shall hold public hearing(s), as required by law.
- D. Approval Criteria. The Town Council shall use the following criteria in making their decision regarding approval or disapproval of a rezoning application:
1. The proposed rezone is consistent with goals, objectives and policies of the Town's Growth Management Plan.
  2. The proposed zoning district is compatible with the surrounding area's zoning designation(s) and existing uses.
  3. The subject property is physically suitable for the uses permitted in the proposed district.

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## **Sec. 3-39. Conditional Use Applications**

The purpose of a conditional use is to allow uses not permitted by right but which may provide for an individual or community-serving need and which, subject to conditions, would not negatively impact the integrity of the zoning district. A conditional use may be approved by the Town Council as further provided for in this Article.

A. General Criteria. Applications for a Conditional Use may require the submission of a site plan in accordance with the provisions of this Chapter. No certificate(s) of occupancy shall be issued for any use unless said use has been approved by the Department. An application for a conditional use shall be made to the Department prior to an application for a building permit and will only be accepted if all other ordinances and provisions of the Town have been complied with. Except as may otherwise be required by law or administrative procedures, all required county, regional, state, or federal agency approvals shall be obtained prior to the approval of an application.

(B) Approval Criteria. The Town Council shall use the following criteria in making their decision regarding approval or disapproval of a conditional use application:

1. Compliance with the Town's Growth Management Plan.
2. Consistent with the "character and purpose" of the zoning district.
3. The size, shape and character of the property are suited for the proposed use.
4. Is compatible with the existing uses near the property.
5. Will not adversely affect the development of the general neighborhood or district.
6. Will not generate vehicular traffic or create vehicular circulation problems or parking demands that have an unfavorable impact on surrounding properties when compared with uses permitted by right in the same district.
7. Potential for fire and/or other equally or greater dangerous hazards.
8. Create an unfavorable environment impacts on surrounding uses (e.g. noise, glare, smoke, dust, odor, fumes, water pollution, or general nuisance).
9. Is consistent with existing and planned pedestrian and vehicular circulation adjacent to and near the property.
10. Site is adequately served by essential public services and facilities not requiring additional public expense in infrastructure improvements.
11. Will not adversely affect any site or feature of historical, cultural, natural or scenic importance.
12. Will not be contrary to the public health, safety, and welfare, provided that a denial based exclusively on this language shall include explicitly findings

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regarding the way in which granting the special exception would be contrary to the public health, safety and welfare.

- (C) Application. Any application for a Conditional Use shall include the following information, if determined by the Director to be applicable:
1. The location and size of the site, including its legal description and a current certified survey.
  2. The recorded ownership interests including liens and encumbrances and the nature of the developer's interest if the developer is not the owner.
  3. The relationship of the site to existing development in the area including streets, utilities, residential and commercial development, and physical features of the land including pertinent ecological structures.
  4. The density or intensity of land use to be allocated, all parts of the site to be developed, together with tabulations by acreage and percentage thereof.
  5. The location, size, and character of any open space, common or otherwise.
  6. The use and the number of stories and height, bulk, and location of all buildings and other structures.
  7. The requirements as set forth in this Chapter and other Chapters, including the necessary documentation for providing required improvements such as streets, water supply, storm drainage, parking, landscaping, and sewage collection as well as the provisions for all other appropriate public and private services such as police or security protection, fire protection, and refuse collection.
  8. The substance of covenants, grants of easements, or other restrictions proposed to be imposed upon the use of the land, buildings, and structures including proposed easements or grants for public utilities.
  9. Any additional data, plans, or specifications which the applicant believes is pertinent and will assist in clarifying his application.
  10. A demonstration that the proposed conditional use does not degrade adopted levels of service in the Town.
- (D) Town Council Approval. The Department's written recommendations shall be transmitted to the Town Council and a public hearing shall be conducted before the Council, who shall deny; approve; or approve the use subject to conditions. Violation of the conditions and safeguards, when made a part of the terms under which the Conditional Use is granted, shall be deemed a violation of this Chapter.

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## **Sec. 3-40. Growth Management Plan Amendments**

Growth Management Plan amendments, may be considered two (2) times a year, unless otherwise exempted by the Florida Statutes, in accordance with the following procedural calendar and regulations.

- A. Initiation of Application. Amendments to the Town's Growth Management Plan may be initiated by the majority vote of the Town Council, motion of the majority vote of the LPA, Town Administration, petition of the property owner or owner's agent, or contract purchaser with the owner's written consent, which is the subject of a proposed amendment.
- B. Application Filing. Amendment applications shall be filed with the Department of Community Development. The required application form must be completed and signed by the owner or owner's agent, or contract purchaser with the owner's written consent. Upon acceptance of a completed application, the application shall be forwarded to all appropriate reviewing agencies for comment.
- C. Submittal Requirements. All amendment applications shall be accompanied by the following items:
  - 1. An application, on a form provided by the Town, completed and signed by the applicant, the owner or owner's agent, or contract purchaser with the owner's written consent.
  - 2. When the proposal is an amendment to the Growth Management Plan text or map series the applicant shall submit data in support of the request. A text amendment shall be submitted in a strikethrough and underline format.
  - 3. A disclosure statement by the parties with at least 5 percent interest in the project signed by the applicant and notarized. The applicant shall keep this information current at all times during the processing of the application.
  - 4. A survey, signed and sealed by a certified surveyor and mapper, completed not longer than six (6) months in advance of the date of the application, that contains the following information:
    - a. Boundaries of the entire property, with bearings and distances of the perimeter property lines and of each existing and proposed land use classifications.
    - b. Total area of the property and of each existing and proposed district classification presented in square feet and acres. Scale and north arrow, with north, to the extent feasible, oriented to the top of the survey.

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- c. Location of all existing buildings and structures.
- d. Names of all boundary roads or streets, and the width of existing rights-of-way.

### D. Procedure.

- 1. Applications shall be received by the Town in a form set by the Town and made available to the applicants.
- 2. The Department shall review all submitted applications for Growth Management Plan amendments and shall prepare a comprehensive written recommendation.
- 3. The LPA shall hold a public hearing to consider applications for amendments to the Growth Management Plan and shall, upon conclusion of the public hearing, make a recommendation to the Town Council with respect to each application.
- 4. The Town Council shall hold public hearing(s) to consider the recommendations of the LPA with respect to applications for amendments to the Growth Management Plan and shall, upon conclusion of the public hearing(s), adopt an ordinance expressing an intent to adopt those proposed amendments to the Growth Management Plan.

### **Sec. 3-41. Vested Rights Determinations**

Any property owner who believes that he or she has a vested right, may submit an application for a determination of vested rights to the Department as provided for in Article I, Sec. 3-15.

- A. Review Procedures for Vested Rights. The Department shall review the application and attachments as to form and sufficiency and shall within thirty (30) business days of receipt thereof determine and notify the applicant whether the application information is in compliance with this section. Within thirty (30) business days after acknowledging receipt of a sufficient application, the Department shall place the application on the agenda of the next available Town Council meeting, unless otherwise requested by the applicant. The Town Council shall review the application and any other information which it deems necessary and advisable, and shall issue a final determination as to the vested rights claim.
- B. Application. Any property owner filing for a determination of vested rights with the Department shall do so on a form approved by the Town hereby known as "Application for Vested Rights". The application shall be accompanied by a fee as set by resolution of the Town Council and contain a sworn statement as to the basis upon which the vested rights are asserted, together with documentation required by the Town and other



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documentary evidence supporting the claim. The Town Council shall review the application and, based upon the evidence submitted, shall make a written determination as to whether the property owner has established vested rights.

- C. Effect of vested rights determination. A determination by the Town Council that a property owner is entitled to a vested right shall entitle development or use in accordance with such determination. However, a vested right determination shall not limit the applicability of other provisions of this Chapter, nor shall it entitle the applicant to the issuance of any development permit not specified in the final vested rights determination.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## ARTICLE IV

### DISTRICTS AND DEVELOPMENT STANDARDS

#### Sec. 3-50. Purpose

The creation of districts and standards allow for classifying and regulating the use and development of the lands and waters of the Town. These districts are established for the purpose of protecting, promoting, and improving the public health, safety, comfort, order, appearance, convenience, morals, and general welfare of the community. These districts control the location of uses and regulate the location, height, and bulk of buildings to be erected or structurally altered for such uses; to control population density and the intensity of use of lot areas; and to require adequate yards and other open spaces surrounding such buildings.

#### Sec. 3-51. Schedule of Districts and Official Zoning District Map

In accordance with these Land Development Regulations, the Town is hereby divided into the following zoning districts. Exhibit I, Zoning Map.

District Description	Character
Estate Residential (ER)	Large Lot Residential
Single-Family Residential (SR)	Standard Lot Residential
Multi-Family Residential (MR-9, MR-13)	Standard Multi-Family
Neighborhood Residential (NR)	Pedestrian Friendly Residential
Neighborhood Center 1 (NC-1) Neighborhood Center 2 (NC-2)	Pedestrian Friendly Neighborhood Services Mixed Use
Transit Corridor (TRC)	Transit Oriented Pedestrian Friendly Mixed Use
Town Center (TC)	Mixed Use, Regional Commercial Government
Institutional (INT)	Education Medical Services Place of Public Assembly

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Parks (PK)	Parks & Open Space Recreation
Conservation (CON)	Conservation Environmental
Water Use (WU)	Water areas

### **Sec. 3-52 Relationship of Zoning Districts to Land Use Categories**

Zoning categories shall implement the underline Future Land Use Map designation on the property.

### **Sec. 3-53. Prohibited Uses and Structures**

- (A) Any use that is specifically listed as a prohibited use shall be prohibited. Unless a use is specifically listed as a permitted or conditional use, it shall be prohibited.
- (B) No building shall be erected and no existing building shall be moved, altered, added to, or enlarged, nor shall any land or building be designed, used, or intended to be used for any purpose or in any manner other than as permitted in the district in which the building or land is located.
- (C) No building shall be erected, reconstructed, or structurally altered to exceed in height the limit designated in this Article for the district in which the building is located, except where bonuses are allowed.
- (D) No building shall be erected, and no existing buildings shall be moved, altered, enlarged, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity to the yard, lot area, and building location and bulk regulations designated in this Article for the district in which the building or open space is located.
- (E) No yard or other open space or required off-street parking or off-street loading space provided around any building for the purpose of complying with the provisions of this Article shall be considered as meeting the requirements for any other building, structure, or use, except where specific provisions is made in the Articles of this code.
- (F) The following uses shall be prohibited in any of the districts: (1) Bee hives or the breeding or raising of animals other than customary pets; (2) keeping, breeding, or maintaining of horses, cattle or goats; and (3) the raising of poultry or fowl.

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## **Sec. 3-54. ER, Estate Residential District**

The Estate Residential District is coded to accommodate existing very low density residential development areas and to protect their associated natural vistas and landscape features. This District is established to protect these low density residential areas and their customary development patterns to prevent sacrificing environmentally sensitive landforms, natural vistas and scenic factors which provide definition to the Town's design. The District may be expanded where practicable.

(1) *Permitted Uses.*

- (a) Detached Single-family Dwelling
- (b) Group Home limited to six (6) resident clients on the premises. (See supplemental regulations for additional requirements)
- (c) Family Day Care Home

(2) *Table of Standards.*

<b>Standard</b>	<b>ER</b>
<b>Minimum Lot Area (square feet)</b>	15,000
<b>Maximum Density (units per acre)</b>	2.5
<b>Minimum Unit Size (square feet)</b>	1,700
<b>Maximum Height (feet)</b>	35
Number of stories	2
<b>Principal Structure Setbacks (feet)</b>	
Front	25
Side Street	15
Interior Side	10
Rear	25
<b>Minimum Spacing Between Buildings</b>	10
<b>Maximum Impervious Surface Coverage (percent)</b>	50
<b>Minimum Lot Width (feet)</b>	120
<b>Minimum Lot Depth(feet)</b>	125
<b>Minimum Open Space (percent)</b>	40
<b>Accessory Structure Setback</b>	
Front	25
Side Street	15
Interior Side	5
Rear	5

(4) *Lots platted prior to the adoption of this Article shall not be subdivided.*

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(5) No more than 25 percent of the frontage of a lot in the ER zoning district shall be covered by asphalt, concrete or pavers. The 25 percent includes the driveway, an entrance walkway from the edge of property line to the principal structure.

(6) Typical ER, Estate Residential Site Plan. See Graphic IV-1.

### **Sec. 3-55. SR, Single-Family Residential District**

The Single-Family Residential District is coded to permit development of new or the completion of previously approved development of lands within the district and/or annexation of conventional single-family residential subdivisions existing or approved prior to the effective date of these regulations.

(1) *Permitted Uses.*

- (a) Detached Single-family Dwelling
- (b) Group Home limited to six (6) resident clients on the premises. (See supplemental regulations for additional requirements)
- (c) Family Day Care Home
- (d) Single-family Zero Lot Line if based on a site plan approved prior to the adoption of this code.

(3) *Table of Standards.*

<b>Standard</b>	<b>SR</b>
<b>Minimum Lot Area (square feet)</b>	7,500
<b>Maximum Density (units per acre)</b>	5
<b>Minimum Unit Size (square feet)</b>	1,200
<b>Maximum Height (feet)</b>	35
Number of stories	2
<b>Principal Structure Setbacks (feet)</b>	
Front	25
Side Street	15
Interior Side	5
Rear	15
<b>Minimum Spacing Between Buildings</b>	10
<b>Maximum Impervious Surface Coverage (percent)</b>	60
<b>Minimum Lot Width (feet)</b>	75
<b>Minimum Lot Depth (feet)</b>	100
<b>Minimum Open Space (percent)</b>	40

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<b>Accessory Structure Setback</b>	
Front	25
Side Street	15
Interior Side	5
Rear	5

(4) *No more than 40 percent of the frontage of a lot in the SR zoning district shall be covered by asphalt, concrete or pavers. The 40 percent includes the driveway, an entrance walkway from the edge of property line to the principal structure.*

(5) *Typical SR Site Plan. See Graphic IV-2.*

## **Sec. 3-56. MR, Multi-Family Residential District**

The Multi-Family Residential District is coded to permit the completion and/or annexation of conventional multi-family residential development within the district. The district is intended to be townhouse, two-family to multi-family residential. The district is not intended to be expanded beyond the boundaries of existing MR areas.

(1) *Permitted Uses.*

- (a) Multi-Family Dwelling
- (b) Townhouse Dwelling
- (c) Two-Family Dwelling
- (d) Religious Institutions

(2) *Table of Standards.*

<b>Standard</b>	<b>MR-9</b>	<b>MR-13</b>
<b>Minimum Lot Area (square feet)</b>	2,250	1,500
<b>Maximum Floor Area Ratio [religious institutions]</b>	4.0	4.0
<b>Maximum Density with Green Bonus (units per acre)</b>	9	13
<b>Minimum Unit Size [in square feet]</b>		
Studio	NA	500
1 Bedroom	600	600
2 Bedroom	900	900
3 Bedroom	1,000	1,000
<b>Base Density (units per acre)</b>	6	10
<b>Maximum Height (feet)</b>	35	45
Number of stories	1	3
Number of stories with Green Bonus	2	4

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<b>Principal Structure Setbacks (feet)</b>		
Front	25	20
Side Street	15	15
Interior Side	7.5	15
Rear	25	25
<b>Minimum Spacing Between Buildings</b>	10	25
<b>Maximum Building Group Length (feet)</b>	200	NA
<b>Maximum Impervious Surface Coverage (percent)</b>	65	65
<b>Minimum Lot Width (feet)</b>	50	25
<b>Minimum Lot Depth (feet)</b>	90	NA
<b>Open Space (percent)</b>		
Landscaped	40	35
Common	15	20
<b>Accessory Structure Setback (feet)</b>		
Only permitted in rear yard	2.5	2.5
<b>Common Recreational Facility Setback</b>		
Front	50	50
Side Street	15	15
Interior Side	15	15
Rear	20	20

- (4) *Green designation. Buildings that pursue a height bonus and which exceed one (1) or three (3) stories shall pursue Green Designation per the requirements of Article V.*
- (5) *Typical MR-9 Site Plan. See Graphic IV-3.*
- (6) *Typical MR-13 Site Plan. See Graphic IV-4.*

## **Sec. 3-57. NR, Neighborhood Residential District**

The Neighborhood Residential District provides for residential development surrounding mixed-use neighborhood commercial areas. The district preserves the traditional building pattern of mixed residential development, which historically forms a vibrant, active, and cohesive neighborhood unit. The district provides for medium density residential development within walking distance [generally ½ mile] of neighborhood centers or commercial corridors. The regulations detailed in this section are coded to permit the construction of detached, attached, and apartment building types in proximity to each other to encourage a traditional, pedestrian-friendly streetscape.

- (1) *Permitted Uses.*
  - (a) Townhouse Dwelling
  - (b) Two-Family Dwelling

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- (c) Multi-Family Dwelling
- (d) Group Home limited to six (6) resident clients on the premises. (See supplemental regulation for additional requirements)

(2) *Table of Standards.*

Standard	NR
Minimum Lot Area (square feet)	5,000
Maximum Floor Area Ratio	NA
Maximum Density (units per acre)	5
Maximum Height (feet)	35
Number of stories	3
Principal Structure Setbacks (feet)	
Front (maximum)	25
Side Street	10
Interior Side	5
Rear	15
Maximum Impervious Surface Coverage (percent)	70
Minimum Lot Width (feet)	50
Minimum Lot Depth (feet)	100
Accessory Structure Setback (feet)	
Only permitted in rear yard	2.5

### Sec. 3-58. NC, Neighborhood Center District

The Neighborhood Center District provides for the location of pedestrian scaled shops, restaurants, services, small workplaces, and residential buildings central to a neighborhood [or grouping of neighborhoods] and within walking distance of dwellings. The Neighborhood Center District shall be developed on an interconnected pattern of streets and typically limited to approximately ¼ mile in radius. Uses in the District will have a primary market area of three (3) miles and are intended to service the daily needs of the residents of the surrounding neighborhoods. The pedestrian is expected to be able to walk from one end of the district to the other in 10-15 minutes.

- (1) *Permitted Uses.*
  - (a) Commercial and Retail (not exceeding 25,000 SF as a single use)
  - (b) Office (requiring less than 50 parking spaces)
  - (c) Restaurant
  - (d) Multi-Family (within a vertical mixed use development)



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- (e) Townhouse (within a horizontal mixed use development)
- (f) Medical
- (g) Civic
- (h) Park and Open Space
- (i) Place of Public Assembly (with a minimum distance of 1,000 feet between another place of public assembly)
- (j) Outdoor Dining (see supplemental standards for further regulations)

### (2) *Prohibited Uses.*

- (a) Repair Garage
- (b) Service Station
- (c) Vehicle Service Center
- (d) Entertainment Center
- (e) Kennel
- (f) Manufacturing and Industrial
- (g) Outdoor Storage
- (h) Self Storage Facility
- (i) Automobile, Truck, Equipment Sale or Rental
- (j) Funeral Home
- (k) Donated Goods Store
- (l) Furniture Store
- (m) Home Improvement Center
- (n) Pawn Shop
- (o) Pain Management Clinic
- (p) Theater
- (q) Adult Entertainment
- (r) Check Cashing Service

### (3) *Conditional Uses.*

- (a) Conservatory, Health and Fitness, Martial Arts or Dance Studio
- (b) Educational Facility/School
- (c) Office [with 50 or more parking spaces]
- (d) Commercial and Retail (exceeding 25,000 SF but less than 55,000 SF as a single use)
- (e) Veterinarian Office [including grooming and indoor boarding]
- (f) Neighborhood Convenience Store
- (g) Bar and Nightclub
- (h) Drive-thru

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(4) *Site Development Standards.*

1) Story. Buildings shall be at least two (2) stories. Office, commercial and retail, residential, civic or finished attic space, or façade design above the ground floor shall count as a second story when more than 50 percent of the building footprint is encompassed by the space. Each upper story shall be a minimum of 8-feet in height.

2) Mixed use. Buildings are encouraged to be vertically mixed use in design and character. Horizontal mixed use development is encouraged on a site that cannot otherwise accommodate vertical mixed use. Commercial and retail uses shall be located on the ground floor of a multi-story building. Office uses should be located on higher floors, while residential may exist on any level. When residential is part of the mix of uses, it can be no less than 20 percent or more than 80 percent, whether vertical or horizontal in form and function.

3) Green designation. Buildings that pursue a height bonus and which exceed two (2) stories shall pursue Green Designation per the requirements of Article V.

4) Buildings fronting Old Cutler Road. Buildings which are located on Old Cutler Road shall be required to provide an outdoor plaza and/or an area for seating or café tables between the building and the right-of-way. No single tenant in a building fronting Old Cutler Road shall exceed 25,000 square feet in size.

(5) *Table of Standards.*

Standard	NC-1	NC-2
Minimum Lot Area (square feet)	NA	NA
Maximum Floor Area Ratio	1.6	0.4
Maximum Floor Area Ratio with Green Bonus	2.0	0.5
Maximum Density (units per acre)	15	NA
Maximum Density with Green Bonus	30	NA
Maximum Height (feet)	35	35
Maximum Frontage Height with Green Bonus	48	NA
Number of stories	3	2
Number of frontage stories with Green Bonus	4	NA
Adjoining Residential Zoning (feet)	35	NA
Number of stories	3	
Building Frontage (percent)		
Along Primary Street	70	NA
Along Secondary Street	50	

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<b>Principal Structure Setbacks (feet)</b>		
Front (maximum)	20	20
Side Street	15	15
Interior Side	0	0
Rear	20	20
Rear (abutting an alley)	0	0
<b>Setbacks Fronting Old Cutler Road when right-of-way is less than 100 feet, as measured from the edge of payment</b>		
Front (minimum) - feet	12	N/A
Front (maximum) - feet	20	N/A
<b>Maximum Impervious Surface Coverage (percent)</b>	70	70
<b>Minimum Lot Width (residential) (feet)</b>	25	NA
<b>Minimum Lot Depth (feet)</b>	NA	NA
<b>Open Space (percent)</b>		
In the form of courtyards, gardens, colonnade, forecourt, balconies, plazas or squares	5	NA
<b>Encroachment into ROW (Feet)</b>		
Balcony	5	
Awning	5	NA
<b>Accessory Structure Height (feet)</b>		
Only permitted in rear yards of townhomes	6	NA

## Sec. 3-59. TRC, Transit Corridor District

The Transit Corridor District provides for the location of transit-oriented uses and uses having a market area extending beyond the scale of the corridor and surrounding neighborhoods. The intent of the district is to facilitate convenient access, minimize traffic congestion, and reduce visual clutter to create a development pattern which improves the aesthetic quality and character of the US 1 corridor within the Town. Buildings are required to relate to the street with a pedestrian scale, rather than to parking lots. Site design criteria is required to facilitate ease of pedestrian access along the corridor and the bus way.

### (1) Permitted Uses.

- (a) Commercial and Retail (not exceeding 55,000 SF as a single use; 60,000 SF for projects meeting Green Building Program Designation per Article V. Development bonuses shall not exceed the maximum permitted by the Growth Management Plan)
- (b) Multi-Family (within a vertical mixed use development)
- (c) Civic
- (d) Personal Service
- (e) Office and Institutional

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- (f) Restaurant
- (g) Hotel
- (h) Motel
- (i) Theater
- (j) Adult Entertainment
- (k) Medical

(2) *Prohibited Uses.*

- (a) Pawn Shop
- (b) Outdoor Storage
- (c) Self-Storage Facility
- (d) Donated Goods Store
- (e) Gun Shop
- (f) Cash Checking Service

(3) *Conditional Uses.*

- (a) Amusement Facility
- (b) Automotive / Boat / Truck Sales, Service and Repair
- (c) Bar and Nightclub
- (d) Gold Buying
- (e) Telecommunication Tower
- (f) Parking Structure
- (g) Outdoor Dining Area
- (h) Pain Management Clinic

(4) *Site Development Standards.*

a. Story. Buildings shall be a minimum of two (2) stories when located on a development site of three (3) acres or larger. Office, commercial and retail, residential or finished attic space above the ground floor count as a second story when more than 50 percent of the building footprint is encompassed by the space. Each upper story shall be a minimum of 8-feet in height.

b. Mixed use. Buildings are encouraged to be vertically mixed use in design and character. Horizontal mixed use development is encouraged on a site that cannot otherwise accommodate vertical mixed use. Commercial and retail uses shall be located on the ground floor of a multi-story building. Office uses should be located on higher floors, while residential may exist on any level. When residential is part of the mix of uses, it can be no less than 20 percent or more than 80 percent, whether vertical or horizontal in form and function.

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- c. Green designation. Buildings that pursue a height bonus and which exceed two (2) stories shall pursue Green Designation per the requirements of Article V.

(5) *Table of Standards.*

<b>Standard</b>	<b>TRC</b>
<b>Minimum Lot Area (square feet)</b>	NA
<b>Maximum Floor Area Ratio</b>	2.0
<b>Maximum Density (units per acre)</b>	75
<b>Minimum Façade Height (feet)</b>	25
Number of stories (minimum)	2
<b>Maximum Height (feet)</b>	60
Number of stories	5
Setback of façade for height above 5 <sup>th</sup> story	20
<b>Adjoining Residential Zoning (feet)</b>	35
Number of stories	3
<b>Building Frontage (percent)</b>	
Along Primary Street	100
Along Secondary Street	75
<b>Setbacks (feet)</b>	
Front	0
Side	0
Rear	0
Rear (abutting an alley)	0
<b>Maximum Impervious Surface Coverage (percent)</b>	100
<b>Minimum Lot Width (feet)</b>	NA
<b>Minimum Lot Depth (feet)</b>	NA
<b>Open Space (percent)</b>	
In the form of courtyards, gardens, colonnade, balconies, plazas and squares	15
<b>Encroachment into ROW (feet)</b>	
Balcony	5
Awning	8
<b>Detached Accessory Building</b>	Not permitted

## Sec. 3-60. TC, Town Center District

The Town Center District is coded to accommodate the higher overall intensity of development required to support the Town. It is expected that the District may be expanded over time to meet the growth in demand for downtown facilities and services. The Town Center District is

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provided to encourage the expansion and redevelopment of Southland Mall and adjoining areas zoned Town Center. A broad array of uses is expected in a pattern which integrates shops, restaurants, services, work places, civic, educational, and public assembly uses, and higher density housing in a compact, pedestrian-oriented environment. The Town Center District anchors the surrounding residential neighborhoods while also serving the broader community.

(1) *Permitted Uses.*

- (a) Mixed Use
- (b) Commercial and Retail
- (c) Multi-family (within a mixed use development)
- (d) Civic
- (e) Office
- (f) Hotel
- (g) Family Entertainment Center
- (h) Bar or Nightclub
- (i) Park
- (j) Professional Service
- (k) Place of Public Assembly (minimum 1,000 feet between another place of public assembly)
- (l) Recreational Facility
- (m) Restaurant
- (n) Public School
- (o) Outdoor Dining

(2) *Prohibited Uses.*

- (a) Kennel
- (b) Manufacturing
- (c) Outdoor Storage
- (d) Self Storage Facility
- (e) Funeral Home
- (f) Donated Goods Store
- (g) Adult Entertainment
- (h) Motel
- (i) Pawn Shop
- (j) Cash Checking Service

(3) *Conditional Uses.*

- (a) Drive-Thru

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (b) Automotive / Boat / Truck Sales, Service and Repair
- (c) Parking Structure

(4) *Table of Standards.*

Standard	TC Sub-districts		
	Edge	Center	Core
<b>Minimum Lot Area (square feet)</b>	NA	NA	NA
<b>Maximum Floor Area Ratio</b>	0.5	2.0	3.0
<b>Maximum Floor Area Ratio with Green Bonus</b>	1.0	2.5	3.8
<b>Maximum Density (units per acre)</b>	50	150	250
<b>Minimum Façade Height (feet)</b>	25	25	25
Number of stories (minimum)	2	2	2
<b>Maximum Height (feet)</b>	96	180	216
Number of stories (maximum <del>minimum</del> )	8	15	18
Setback of façade for height above 5 <sup>th</sup> story at a minimum of 15 feet			
<b>Building Frontage (percent)</b>			
Along Primary Street	75	100	100
Along Secondary Street	75	75	75
<b>Principal Structure Setbacks (feet)</b>			
Front (minimum / maximum)	10 / 20	10 / 20	10 / 20
Side Street (minimum / maximum)	5 / 10	5 / 10	5 / 10
Interior Side	0	0	0
Rear	20	20	20
Rear (abutting an alley)	0	0	0
<b>Maximum Impervious Surface Coverage (percent)</b>	100	100	100
<b>Minimum Lot Width(feet)</b>	NA	NA	NA
<b>Minimum Lot Depth (feet)</b>	NA	NA	NA
<b>Non-Residential Open Space (percent)</b>			
In the form of courtyards, gardens, colonnade, balconies, plazas and squares, medians and parking lot islands	15	15	15
<b>Residential Open Space (percent)</b>	0.5 acres/100 units	0.5 acres/100 units	0.5 acres/100 units
In the form of gardens, balconies, plazas and squares			
<b>Encroachment into ROW (Feet)</b>			
Balcony	5	6	6
Awning	8	8	8
<b>Detached Accessory Building</b>	Not permitted	Not permitted	Not permitted

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

(5) *Site Development Standards.*

a. Story. Buildings shall be a minimum of two (2) stories, except that parcels with less than 25,000 square feet shall not be required to comply with the minimum height requirements. Office, commercial and retail, residential or finished attic space or façade design above the ground floor shall count as a second story when more than 50 percent of the building footprint is encompassed by the space. Each upper story shall be a minimum of 8-feet in height.

b. Mixed use. Buildings are encouraged to be vertically mixed use in design and character. Commercial and retail uses shall at a minimum be located on the ground floor of a multi-story building. Residential and office uses should be located on higher floors, while civic uses can be located on any floor.

c. Residential. Residential, if constructed, shall not exceed 80 percent of total floor area developed on a site. Buildings more than two (2) stories shall provide a minimum of 20 percent of total floor area for residential in a vertical mixed use environment. Horizontal mixed use development is encouraged on a site that cannot otherwise accommodate vertical mixed use.

d. Green designation. Buildings that pursue a height bonus and which exceed two (2) stories shall pursue Green Designation per the requirements of Article V.

e. Open space. Common open space shall be provided at a rate of 0.5 acres for each 100 dwelling units to meet the anticipated open space needs of the residents of the proposed residential development. Recreation facilities, playgrounds, tennis courts, basketball courts, swimming pools, community buildings, etc. may be included to assist in fulfilling the requirement. All open space shall be included in the development schedule and constructed and fully improved by the developer at a rate equivalent to or greater than the construction of residential units.

### **Sec. 3-61. INT, Institutional District**

The Institutional District provides for the continued and future use, expansion, and new development of academic and religious campuses, as well as government and health related facilities. This district is coded to promote the many varied uses associated with such institutions while maintaining the overall design integrity of traditional town planning tenets.

(1) *Permitted Uses.*

- (a) Government Facility
- (b) Religious Facility
- (c) Hospital



# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (d) Congregate Care and Nursing Home
- (e) Personal Services when limited to the use of the residences within a senior age restricted community

(2) *Conditional Uses.*

- (a) Educational Facility / School with no residential component
- (b) Telecommunication Tower and Associated Equipment
- (c) Fraternal Organization

(3) *Table of Standards.*

<b>Standard</b>	<b>INT</b>
<b>Maximum Floor Area Ratio</b>	1.40
<b>Maximum Floor Area Ratio Green Bonus</b>	1.75
<b>Maximum Height (feet)</b> Number of stories	25 2
<b>Maximum Height Green Bonus (feet)</b> Number of stories Green Bonus	38 3
<b>Setbacks (feet)</b>  Front From District Edge	  25 50
<b>Maximum Building Coverage (percent)</b>	50
<b>Minimum Lot Area (acres)</b>	5
<b>Open Space (percent)</b>  Landscaped In the form of courtyards, gardens, colonnade, balconies, plazas, squares and playgrounds	  25

(4) *Site Development Standards.*

- a. Height. Buildings may be a maximum of two (2) stories, 35-feet in height. Projects receiving Green Incentive Program designation per the requirements of Article VI, may be constructed up to three (3) stories, 40-feet in height.

## **Sec. 3-62. PK, Park District**

The Park District is intended to apply to land owned by Town, county, state, federal governments or their agencies and primarily used for parks and recreational purposes.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (1) *Permitted Uses.*
  - (a) Public Park, Open Space and Recreational Facility
  - (b) Wireless Telecommunication Facilities and Associated Equipment pursuant to Article XIV
- (2) *Site Development Standards.*
  - a. Height. Building height shall be determined by Town Council.

### **Sec. 3-63. CON, Conservation District**

The Conservation District is composed of environmentally sensitive areas. It is intended to preserve and protect open spaces, park lands, wilderness areas, marshlands, watersheds and water recharge areas, scenic areas, beaches, and native flora and fauna. It is also intended to preserve areas for residents and visitors to view wildlife in their natural habitat as a passive recreational opportunity.

- (1) *Permitted Uses.*
  - (a) Elevated Walkway [with railing]
  - (b) Undeveloped Passive Park and Open Space
  - (c) Scenic Viewing Tower
  - (d) Recreational Facility (be limited to trail, interpretive centers, viewing areas and other recreation uses deemed to be of low intensity)
- (2) *Site Development Standards:* as approved by Town Council.

### **Sec. 3-64. WU, Water Use District**

The economy of the Town depends in measure upon the protection and preservation of water areas within the jurisdiction of the Town. All designated waters, including but not limited to basins, canals, lakes, waterways, and all public or privately owned submerged lands are included in this district.

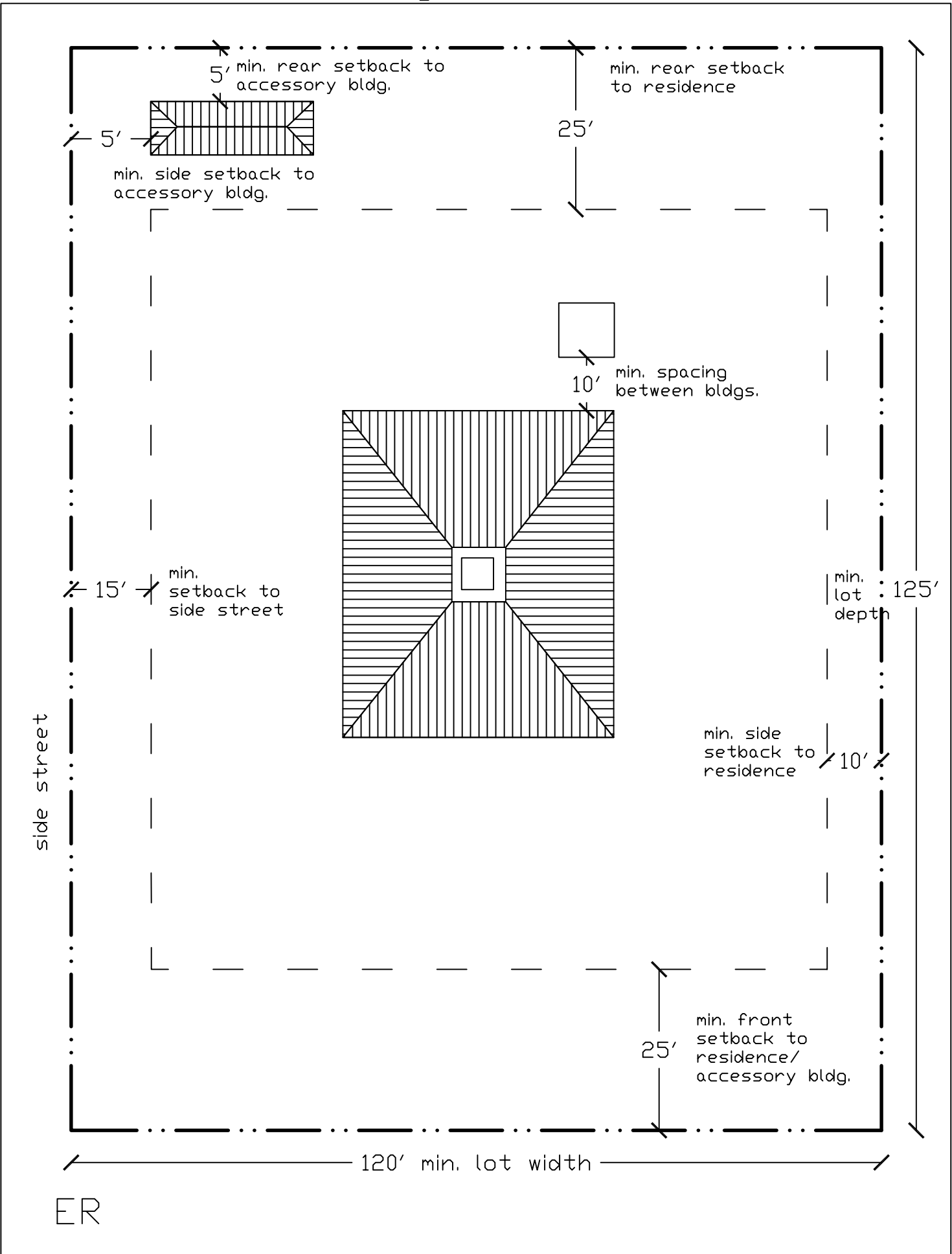
- (1) *Permitted Uses.*
  - (a) Public and privately owned bodies of water including ponds, lakes and canals.
  - (b) Boat Ramp, Dock and Pier incidental to residential uses and marinas where such activities are permitted uses on upland property abutting a WU district. Site plan approval is required for all uses.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

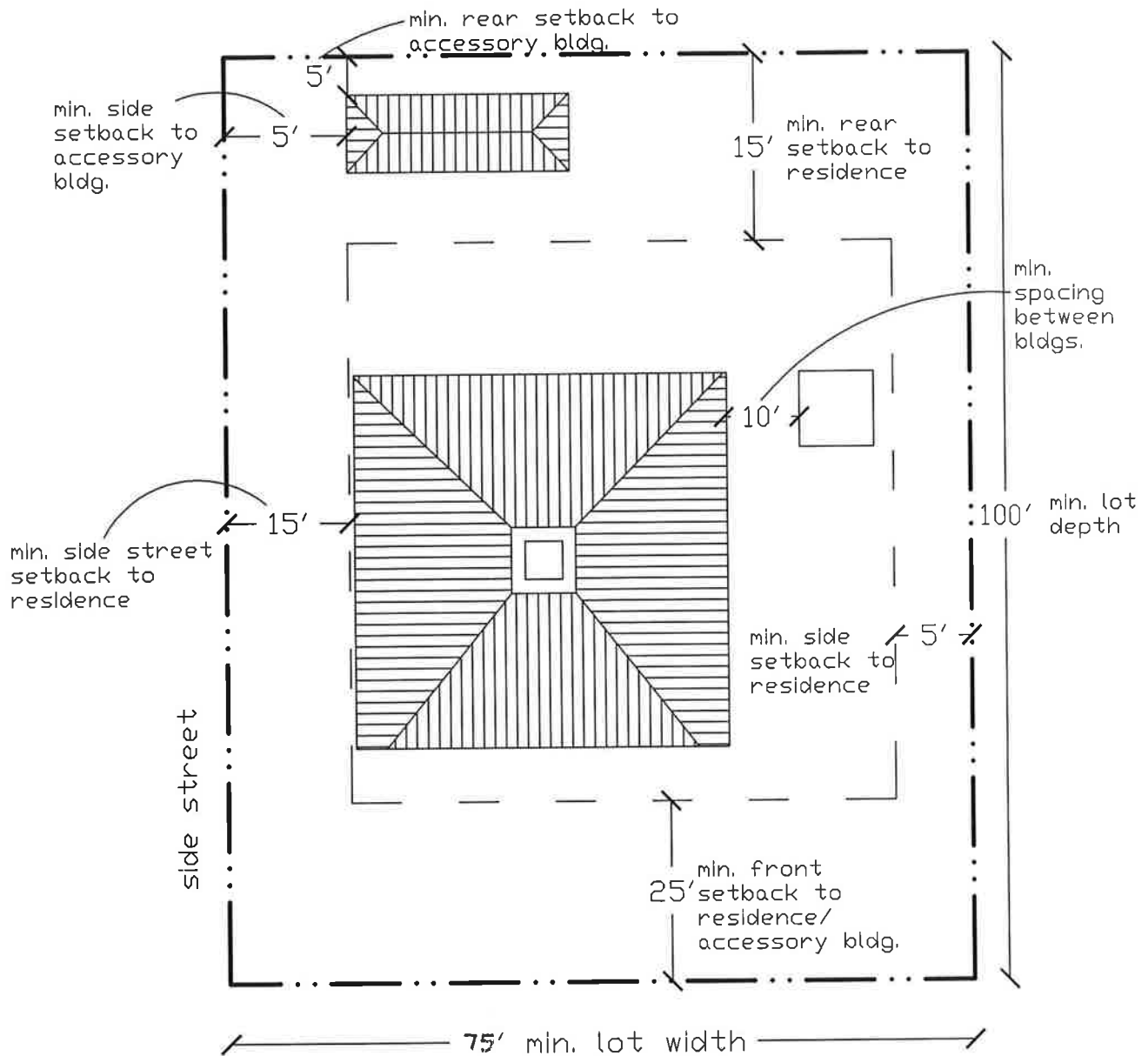
(2) *Site Development Standards.*

(a) Ramps, docks, and piers shall be similar in design, height, and appearance to those on adjoining lots. They are limited to one (1) per lot with a minimum width of four (4) feet and extending no more than twenty (20) feet waterward of the lot line for lakes and no more than six (6) feet for canals. Structures shall be setback a minimum of ten (10) feet from side property lines and twenty (20) feet from adjoining docks.

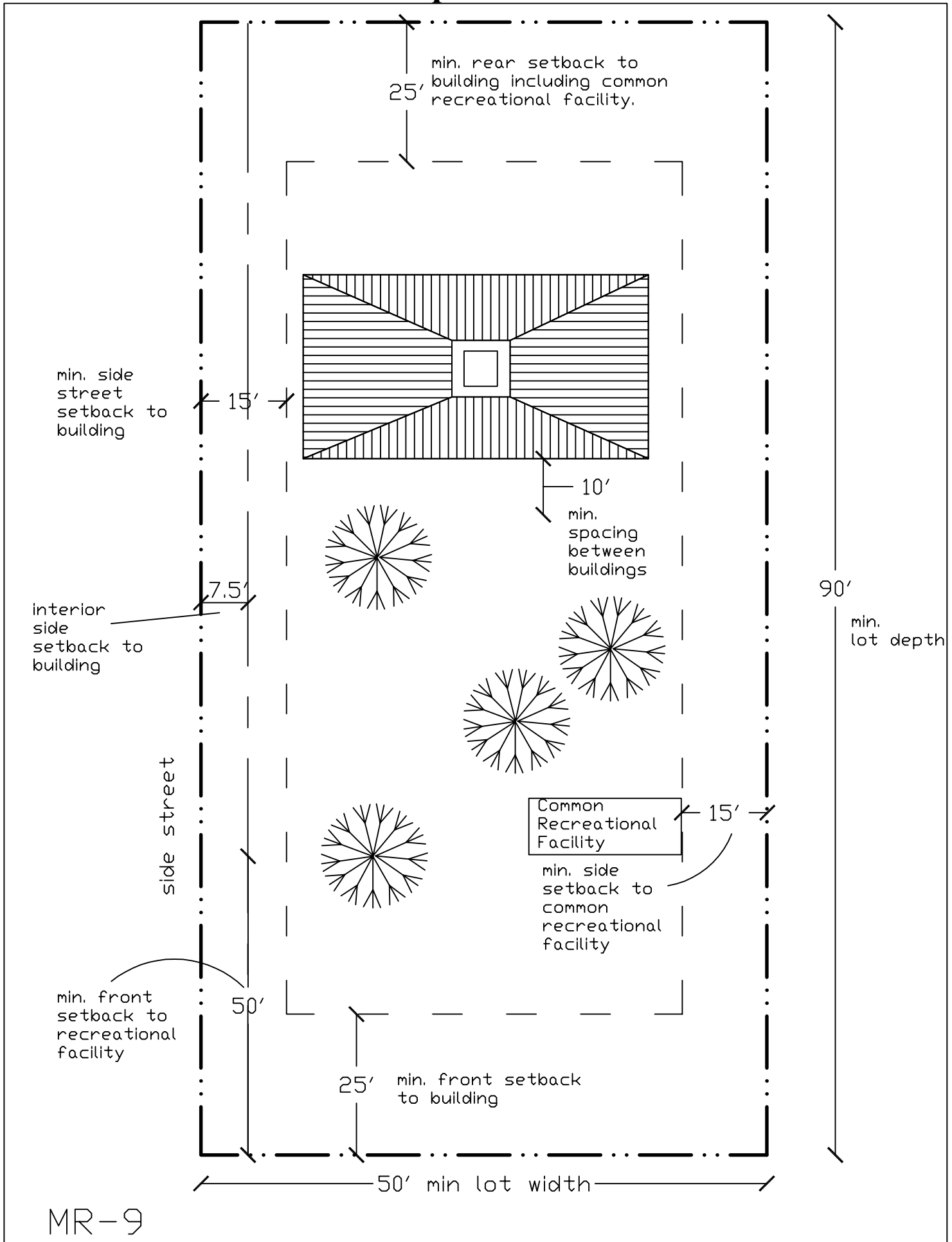
# Graphic IV-1



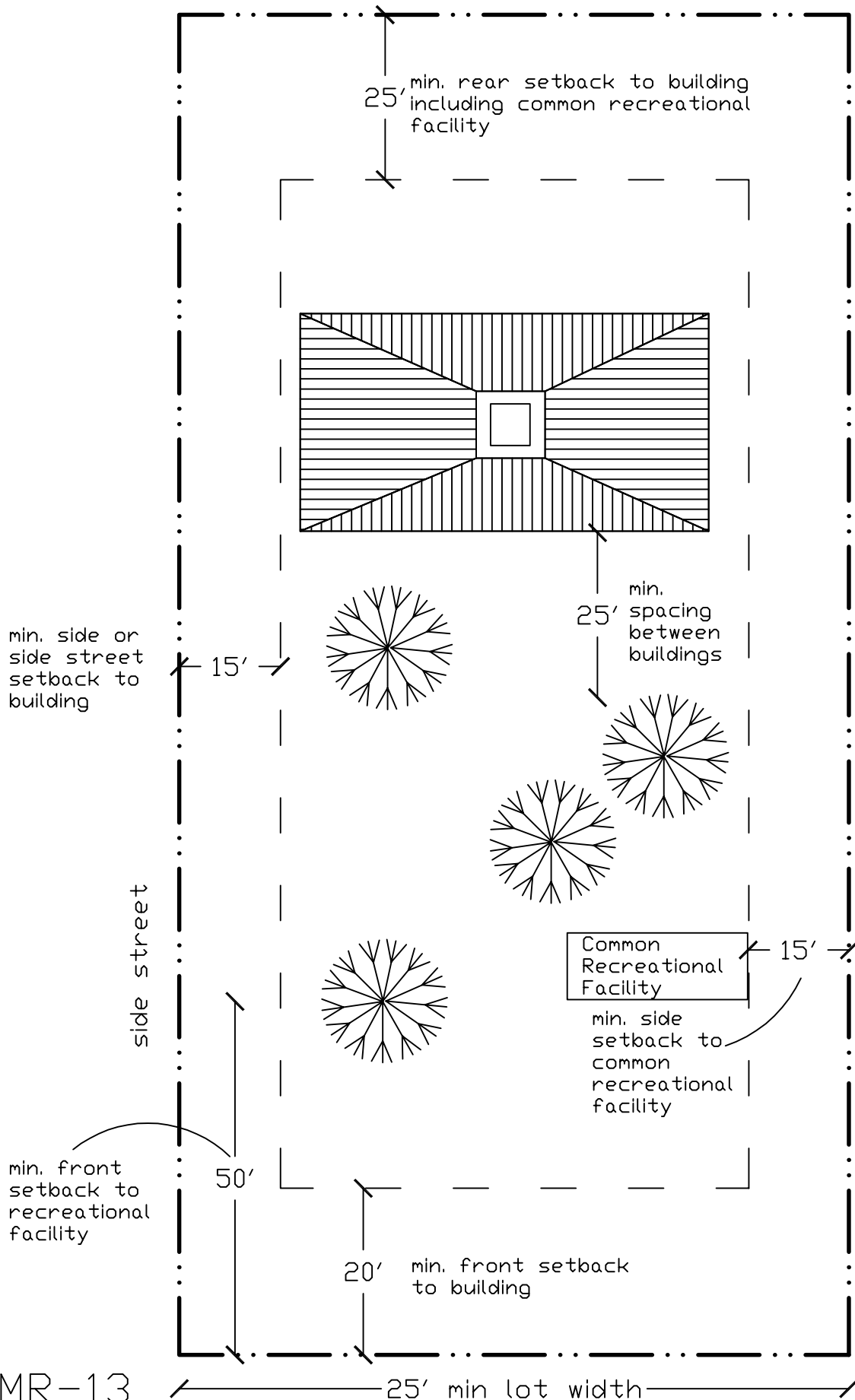
## Graphic IV-2



# Graphic IV-3



# Graphic IV-4



# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## Article V

### GREEN STANDARDS

#### Sec. 3-70. Purpose

The purpose of the Green Standards is to establish a program and administrative procedures which minimizes the negative environmental impacts of development; reduces the use of natural resources, creates a healthier and more sustainable living environment; reduces green house gas emissions; promotes economic and environmental health through sustainable and environmental friendly design parameters; while providing leadership to both the private and public sectors in the area of green building practices in the Town.

To assist in implementation of sustainable building practices and strategies that reduce green house gas emissions, a more efficient use of materials and a reduction in noxious chemicals, the following green building initiatives are required.

#### Sec. 3-71. Public Facilities

Public facilities shall be constructed to meet the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Florida Department of Management Services, as agreed to or permitted by the Director of Community Development.

#### Sec. 3-72. Standards

- (A) Bicycle Parking/Storage. Non-residential development shall provide a minimum of six (6) secure bicycle parking/storage spaces for each 50,000 SF of floor area or part thereof. Townhouse and Multi-family development shall provide secure bicycle parking/storage spaces at a ratio of one (1) parking space for each five (5) residential units or fraction thereof. The location of the space shall be indicated on the site plan and located in a prominent location near the main entrance of the building or development.
- (B) Exchange of Off-Street Parking for Bicycle Parking. Non-residential and multi-family development may reduce the amount of required parking in exchange for additional bicycle parking/storage on a one (1) parking space to six (6) bicycle parking/storage space ratio. No more than 5 percent of required parking shall be eligible for exchange. The bicycle parking/storage shall be in addition to required bicycle parking/storage space.
- (C) Hybrid Electric Vehicles and Inherently Low Emission Vehicle Parking. Non-residential and/or Multi-family development requiring twenty (20) or more parking spaces shall provide



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

an area for parking hybrid electric vehicles (HEV), inherently low emission vehicles (ILEV), and golf carts equal to 5 percent of the off-street parking required for the site. Such parking spaces shall be clearly marked and reserved for such vehicles and are to be located close to the handicapped parking spaces. Vehicles parking in these spaces must display a current Florida Division of Motor Vehicles issued decal.

- (D) Low Emitting Materials. Non-residential and/or Multi-family development shall incorporate low emitting building or construction materials and substances containing minimal or no levels of volatile organic compounds [low-VOC or no-VOC] for paints, coatings, adhesives, sealants, composite wood, and agri-fiber products. Alternate products and technologies shall be permitted upon written approval of the Director.
- (E) Water Conservation. Residential and non-residential developments, as well as Major Renovations must meet the requirements of the Miami-Dade County Water-Use Efficiency Standards Manual, effective January 2009, as may be amended from time to time. The Town shall post a copy of the manual on the Town website and shall have a copy available in the Department.
- (F) Paving Materials. Non-residential, multi-family, and/or mixed-use development shall use paving materials for sidewalks, courtyards, and non-covered parking lots with a minimum Solar Reflective Index (SRI) of 29. As an alternate solution, open grid pervious pavement may be used if it is a minimum of 50 percent pervious and contains vegetation in the open cells.
- (G) Roof Finishes. Roof finishes for residential and non-residential developments shall have a minimum Solar Reflective Index (SRI) of 65 for slopes up to a 2:12 and 25 for slopes greater than 2:12. The minimum SRI shall apply to 75 percent of the roof surface.
- (H) Additional Landscape Requirements. In addition to the requirements in the Town's landscape code, all developments for which a landscape plan is required shall comply with the Florida Friendly Landscaping guiding principles of the Florida Yard and Neighborhood programs. The applicant shall provide written evidence of compliance with each principle.
- (I) Shower Facilities. Non-residential development may provide one accessible and private indoor shower facility for each building, greater than 10,000 SF in area, to accommodate employees traveling on bicycles. Such areas shall be excluded from floor area ratio calculation. In addition, for each one square foot of shower area provided, the floor area for the proposed use shall be increased by one square foot.
- (J) Storage and Collection of Recyclables. Every building shall dedicate an accessible area, serving the entire building, for the collection and storage of non-hazardous recycling materials; including paper, corrugated cardboard, glass, plastic and metals. Such areas shall

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

be a sufficient size to be able to store recyclables for at least one week. Such areas shall be excluded from floor area ratio calculation.

### **Sec. 3-73. Recycling and Diversion of Construction and Demolition Waste**

Sixty (60) percent or more of waste tonnage from construction, demolition, and renovation projects shall be diverted from disposal in landfills. Diversion may be accomplished using new construction methods that reduce the amount of waste generated; through on-site reuse of the waste; delivery of the waste from the site to an approved recycling facility; donation of the material to a non-profit organization in need of such materials; and all other methods as may be approved by the Director through acceptance of a Construction, Demolition and Materials Management Plan (CDMMP).

(A) CDMMP. A CDMMP shall be prepared and submitted to the Director indicating the method and process for complying with the 60 percent diversion standard along with information:

1. Estimated volume or weight of project construction and debris materials to be generated by type.
2. Estimated volume or weight of construction and debris materials feasible to divert; considering cost, energy consumption and delays; via reuse or recycling.
3. The vendor and/or facility proposed to collect, divert, market, reuse and/or receive each material diverted.
4. Estimated volume or weight of the residual materials to be landfilled.
5. Projects involving the removal of all or part of an existing structure shall indicate deconstruction methods; to the maximum extent feasible. Applicants will indicate the manner and method for making the materials generated available for salvage prior to being transported for disposal in a landfill or transformation facility. If deconstruction is not feasible, the applicant shall indicate the circumstances prohibiting such solution.

(B) Compliance with the CDMMP. Prior to scheduling a final zoning inspection, the applicant shall submit documentation indicating compliance with the diversion requirement thresholds specified in the CDMMP. The documentation shall include all of the following:

1. Receipts and gate tickets from the vendor(s) or facility(s) that collected or received construction and demolition debris from the covered project showing the actual weight or volume of that material.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

2. Any additional information the applicant believes is relevant in determining its efforts to comply with this Article.
3. The Director shall review the information submitted and determine whether the applicant has complied with the requirements of this Ordinance for material diversion. If the Director determines that the documentation and certification provided by the applicant does not fully comply with the requirements of this article, the applicant will be found to be in violation and issued a citation equal to three (3) times the diversion fee for the project.
4. The Department may withhold issuance of the Certificate of Occupancy permit for any project until documentation has been received affirming compliance with this section.
5. Approval shall not be required where an emergency demolition is required to protect public health and safety.
6. The Department shall only approve the documentation if it indicates at least 60% of all construction and demolition debris generated by the project has been diverted pursuant to this Chapter; or has received a modification by the Department.

(C) Weighing of Waste. Applicants shall make reasonable efforts to ensure that all construction and demolition materials diverted, or delivered to disposal facilities for disposal, are measured and recorded using the most accurate method of measurement reasonably available. To the extent practical, all construction and demolition debris shall be weighed on scales. Such scales shall be in compliance with all regulatory requirements for accuracy and maintenance. For construction and demolition debris for which weighing is not practical due to size or other considerations, a volumetric measurement may be used. For conversion of volumetric measurements to weight, the applicant shall use the standardized conversion rates approved by the Town for this purpose. Documentation of the foregoing shall consist of photocopies of receipts, weight tickets, gate tickets, and other records from recycling facilities, deconstruction contractors, solid waste enterprises and disposal facilities.

(D) Modification of the Diversion Requirement. An applicant may apply for a modification from the 60 percent diversion requirement if unique site circumstances make it unfeasible to comply. The applicant shall indicate the circumstances that make it unfeasible along with an estimated feasible diversion rate and the rate for each material. The Director shall review the application and determine the maximum feasible diversion rate for each material based on site circumstances. This modified threshold rate will be

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

used for comparison purposes in the issuance of a Certificate of Occupancy. If the Director determines that it is possible for the applicant to meet the 60 percent requirement, the Town shall so inform and provide the applicant with the rationale followed for such determination

- (E) Approved Recycling Facility. Only recycling facilities that are in full compliance with all federal, state, and local permits shall be allowed as an approved recycling facility within a CDMMP.
- (F) CDMMP Application Fee. Each CDMMP application shall be subject to the diversion fee as adopted by resolution of the Town Council.

### **Sec. 3-74. Green Building Program Designation**

Green Building Program Designation may be granted, after a public hearing, by the Town Council.

- (A) Program Procedures. As part of the site plan approval process the applicant shall do the following in order to be considered for the Green Building Program Designation:
  - 1. The applicant must successfully register the project with the Green Building Certification Institute or the Florida Green Building Coalition, or other third party certifying agency as approved by the Town Manager, and provide evidence of such registration.
  - 2. Applicant shall have a minimum of one (1) LEED accredited professional, or other similarly accredited professional, on the design team. Applicant shall provide a copy of the LEED accreditation certificate or similar certification and describe the role of the LEED accredited professional on the design team.
  - 3. The applicant must provide a copy of the pertinent credit checklist indicating which credits the applicant intends to achieve along with a written narrative and detailed drawings and plans illustrating the applicant's intent to meet the prerequisites as described in the applicable LEED Rating System or FGBC Designation for the specific building type.
  - 4. Prior to the issuance of the first principal building permit the applicant shall post a performance bond equal to 5 percent of the total cost of the construction in order to secure performance and fulfillment of the applicant's obligation to obtain the applicable level of certification. In lieu of the bond required by this Section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted. If the project fails to meet the criteria required for certification by the Green Building Certification Institute or other nationally recognized certifying agency within one (1) year after receiving the Town's certificate of occupancy, the applicant shall either request an extension or forfeit one hundred percent of the bond. The applicant, for good cause shown, may request an extension of time of up to one (1) additional year to achieve certification. Such extension may be granted at the sole discretion of the Town Council after having considered the factors and improvements necessary to achieve the requisite certification. If certification is not achieved within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Green Building Fund established by the Town.

(B) Available Incentives. In furtherance of environmental stewardship and creating a sustainable urban community, green building incentives are established for projects seeking and obtaining third party green building certification.

1. Increased Floor Area. Projects achieving a minimum LEED Silver or other equivalent third party certification, up to 10 percent increase in floor area; projects achieving a minimum LEED Gold or other equivalent third party certification, up to 15 percent increase in floor area; projects achieving a minimum LEED Platinum or other equivalent third party certification, up to 20 percent increase in floor area. The bonus floor area shall not exceed the maximum floor area permitted by the underlying Growth Management Plan designation.
2. Increased Height. Additional "bonus" height up to the maximum permitted by the underlying Growth Management Plan designation may be permitted within the Mixed Use, or Institutional or Medium Density Residential Land Use Designations on the adopted Future Land Use Map.
3. Reduction in Parking. The applicant may receive a reduction in overall required parking of up to 10 percent. In no instance shall a combination of reductions in parking obtained either via a shared parking agreement or via other applicable sections of the Land Development Regulations which allow reductions in parking exceed 20 percent of the required parking for each individual use on the site.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

4. Expedited Site and Building Plan Review. The Director shall implement a program to expedite the review and approval of site plan and building permit applications for green buildings.
5. Expedited Building Inspections. Building inspections for projects participating in the Green Building Incentive Program shall be given priority over non-program participants.
6. Reduced Site Plan Review Fee. The applicable site plan review fee shall be equal to 80 percent of the fee required for a non-program participant.
7. Eligibility for Green Building Award Granted by the Town. For the purpose of publicly recognizing outstanding commitment to “green building,” the Town shall provide for an award called the “Town of Cutler Bay Green Building Award” to be awarded annually to a development(s) that participated within the program.
8. Prior to Award. The applicant shall be required to attend a pre-application meeting with the Director for the purpose of a review of the proposed certification checklist and detail of proposed credits for certification. The checklist and certification details shall be confirmed through a development agreement or other agreement between the applicant and the Town that the minimum required by the program guidelines, policies and procedures will be incorporated into the development and maintained in perpetuity. The applicant will provide a performance bond in conformance with the requirements set forth herein.
9. Reduction in Parking for Shower Facilities. Non-residential development providing one accessible and private indoor shower facility in each building may receive an overall reduction in the parking requirement of up to 10 percent or a maximum of one (1) parking space or whichever is greater.

### **Sec. 3-75. Green Building Fund**

Funds that become available to the Town from the forfeiture of Green performance bond shall be deposited in a Green Building Fund established by the Town. The Town shall use the funds for any of the following: education and training of Town staff; education and outreach for the public; energy efficient improvements to municipally owned properties including weatherization, lighting upgrades, heating, ventilation and air conditioning upgrades; open space/green space improvements such as rights-of-way tree plantings; traffic calming, pollution mitigation, low impact drainage and sanitary sewer improvements; and any other additional improvements consistent with green building initiatives as deemed appropriate by the Town Council.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## **Sec. 3-76. Exemptions**

Nothing in these regulations shall prohibit the following:

1. Solar Equipment: Solar equipment may encroach into side and rear setbacks and may exceed height limitations set forth in the zoning development standards.
2. Rain Barrels: Rain barrels shall be permitted within side and rear setbacks.
3. Clotheslines: Clotheslines may be located within the rear yard, or in the case of a corner lot a side yard, and shall not be visible from the public right of way.

## Article VI

### ARCHITECTURE AND FORM STANDARDS

#### Sec. 3-80. Non-Residential and Mixed Use

- A. Balconies, bay windows, arcades, porches at an upper level and their supports at ground level, together with awnings above head height are permitted to encroach into setbacks and up to eight (8) feet of the width of the sidewalk. Encroaching arcades shall cover the entire sidewalk unless Town Council approves an acceptable alternative.
- B. Drive-through customer services, if permitted in the district, must be located at the rear of the building or on a side which does not abut a street.
- C. Parking shall be located to the rear and/or side of the building. Sideyard parking may occupy no more than 45 percent of the principal frontage line. Parking shall not be placed in any sideyard abutting an intersecting street.
- D. Trash containers and mechanical equipment shall be located in a side parking area, if no rear parking is available. Trash containers and mechanical equipment shall be screened from view from the public right of way.
- E. Building walls shall be brick, sandstone, other native stone, tinted/textured masonry, stucco, or other materials similar in appearance and durability. Decorative concrete block may be used on building walls not visible from a public street or as an accent material only. Man made substances such as plastic wood, foam, or false stone are prohibited, unless approved as part of a LEED or alternative green certification program. All accessory structures shall be clad in materials matching the building facade.
- F. The first floor of street level building façades shall be a minimum of 50 percent and a maximum of 70 percent in windows or doorways. Faux or display casements are not permitted in lieu of exterior window treatments for the frontage elevation. No frontage wall shall remain unpierced by a window or functional general access doorway for more than sixteen (16) feet.
- G. No more than 45 percent of the total area of the façade may be comprised of glass area or other openings.
- H. Mirrored or reflected glass is not permitted in any location.
- I. A change in design, doors, window rhythm and articulation, and building materials and textures shall be required at least every hundred (100) feet along a building's street frontage. Minimum spacing between the similar architectural compositions shall be 300



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

feet. Development in the Town Center is exempt from this provision.

- J. Building façades shall have a maximum width of seventy (70) feet before new façade articulation is required.
- K. No exterior wall facing a street or pedestrian walkway shall have a blank, uninterrupted length exceeding thirty (30) feet without including at least two (2) of the following: change in plane, change in texture or masonry pattern, windows, lattice work with vines, or an equivalent element that subdivides the wall into human scale proportions.
- L. Side and rear walls adjoining pedestrian walkways shall include windows and door openings defined by frames, false windows and doors may be allowed in certain situations; sills and lintels; or similarly proportioned modulations of the wall. All sides of the building shall include materials and design characteristics consistent with those on the front of the building.
- M. Building façades shall have a recognizable "base" including, but not limited to thicker walls, ledges and sills using integrally textured materials such as stone or other masonry or inclusion of planters.
- N. Building façades shall have a recognizable "top" including, but not limited to cornice treatments [other than just colored "stripes" or "bands,"] with integrally textured materials such as stone or other masonry, sloping roof with overhangs or brackets, or parapets with three-dimensional cornice treatment.
- O. Development located along designated transit routes shall provide on-site accommodations for public transit access, such as pedestrian walkways, a bus pullout and shelters where applicable following transit plans.
- P. Where multiple stores are located within a larger retail development, each such store shall have a separate exterior customer entrance.
- Q. Pedestrian sidewalks shall be provided from building entries to surrounding streets, parking spaces, external sidewalks, and outparcels.
- R. Entrance canopies shall face the street. Bays and garage entrances may not face the fronting street.
- S. The use of exterior colors that are of high-intensity, metallic, or fluorescent tones shall be prohibited.
- T. Development over five (5) acres in area shall provide at least four (4) of the following:
  - 1. Patio with a minimum of 1,000 SF in area with shaded seating;
  - 2. Pedestrian plaza with a minimum of 1,000 SF in area with benches and shade

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

structures;

3. Green roof, rooftop garden or a green wall covering a minimum of 75 percent of the area;
4. Window shopping covered arcade with a minimum of 1,000 linear feet in length;
5. Outdoor shaded playground area with a minimum of 1,000 SF in area;
6. Covered kiosk area with a minimum of 1,000 SF in area;
7. Water feature with a minimum of 1,000 SF in area; or
8. Clock tower or other focal feature; that, in the judgment of the Director, adequately enhances such community and public spaces. Such areas may be combined into one or more locations, in order to create a larger amenity. Any such areas shall have direct access to the public sidewalk network and shall not be constructed of materials inferior to the principal materials of the building and landscape.

U. Buildings shall incorporate a minimum of eight (8) of the following design treatments:

1. Canopies or portico integrated with the buildings massing and style;
2. Overhangs with a minimum of three feet in depth along all building walls;
3. Arcades with a minimum of eight feet clear in width along the building façade;
4. Artwork accessible and visible to the public;
5. Raised cornice or building banding with a minimum of two reliefs along the building façade;
6. Peaked roof forms;
7. Consistent pattern of arches across the street level primary building façade;
8. Consistent rhythm of display windows across the street level primary building façade;
9. Ornamental and structural architectural details, other than cornices; which are integrated into the building structure and overall design;
10. Projected and covered entry a minimum of five (5) feet in width;
11. Metal or tile roof as the dominant roof material;
12. Decorative landscape planters, a minimum of five (5) feet wide, and areas for shaded seating consisting of a minimum of hundred (100) square feet;

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

13. Integration of specialty pavers, or stamped concrete along the building's walkway. Said treatment shall constitute a minimum of 60 percent of walkway area;
14. Water elements, such as a decorative fountain or similar water feature, a minimum of 300 square feet in area;
15. Integration of porous surfaces over at least 1,000 SF or 25 percent of a pervious area, whichever is greater.

### **Sec. 3-81. Civic Form Principles**

- A. Civic buildings should be built to terminate a street vista whenever possible, and shall be of sufficient design to create visual anchors for the Town.
- B. Civic building walls shall be clad in stone, stucco, brick, glass or marble. Decorative cast concrete and wood may be used as a minority element on façades facing public streets.
- C. Stained glass window treatments or other decorative window treatments are encouraged for places of public assembly.
- D. Principal civic buildings adjacent to residential structures are encouraged to have pitched roofs or similar architectural features to ensure compatibility.
- E. Buildings along a corner must address both streets separately. No street façade shall remain unpierced by a window or doorway for more than fifteen (15) feet. Building façades shall have a human scale by using wood, stone, brick, stucco, glass or combination, not metal.
- F. Buildings shall incorporate five (5) of the following design treatments:
  1. Arcades a minimum of eight feet clear in width along the building façade and one additional wall;
  2. Artwork a minimum of six (6) feet in height and displayed in a plaza area a minimum of 500 SF in area;
  3. Consistent pattern of arches along the building façade;
  4. Consistent rhythm of display windows along all building walls;
  5. Ornamental and structural architectural details which are integrated into the building structure and overall design;
  6. Decorative landscape planters, a minimum of five (5) feet wide, and areas for shaded seating a minimum of 1,000 SF in area;

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

7. Integration of specialty pavers, or stamped concrete along the building's walkway;
8. Water elements shall be a minimum of 300 square feet in area;
9. Public open space, a minimum of 1,000 SF in area to include a plaza, lawn or covered seating area.

### **Sec. 3-82. Modification of Provisions**

The Director may approve variations to this section provided similar materials, configurations, and/or techniques are used that fulfill the intent of the Code. Notice of intent to approve variations shall be published one time in a newspaper of general circulation published in the county and mailed to each contiguous parcel as shown by the current tax roll. The notice shall cite the property in question by street address if possible, and describe the nature of the variation/s granted. Within fifteen (15) calendar days of the date of publication, any person may object to the Director's determination, by filing a formal written appeal stating their name, nature of interest in the matter, and nature of the objection. Upon receipt of the written appeal, a public hearing before the Town Council shall be conducted. If after fifteen (15) calendar days of the publication no objection has been received, the variations are approved and shall be noted on the final approved plan.

## **Article VII**

### **LANDSCAPING AND TREE PRESERVATION**

**Sec. 3-90. Purpose**

This Article establishes minimum requirements for landscaping and tree preservation in the Town of Cutler Bay. The purpose of this Article is to enhance the natural beauty of the Town on private and public property, and public right-of-way through an integrated set of landscaping and tree preservation requirements. These requirements are essential to ensure that proper industry standards and guidelines are applied to promote basic landscaping and tree preservation practices in the Town. In addition, these requirements will further sustainability and green development principles, and improve the quality of life of the Town's residents.

**Sec. 3-91. Applicability**

The provisions of this Article shall be considered minimum standards and shall apply to all private new development, changes of use, additions and expansions when a permit is required (and when the replacement of plant material and irrigation is required (and/or proposed)) in accordance with this Article.

**Sec. 3-92. Definitions**

Terms used throughout this Article shall take their commonly accepted meaning unless otherwise defined in the Town of Cutler Bay "Street Tree Master Plan", the Definitions section of this Code or in Miami-Dade County Chapters 18A, 18B, 24 and 32.

**Sec. 3-93. Compliance with Town Standards**

The minimum requirements for street trees and their placement shall be found in the Town of Cutler Bay "Street Tree Master Plan" dated December 2008 and as may be amended.

**Sec. 3-94. Compliance with County Standards**

- I. Minimum standards or requirements for landscaping and irrigation within the Town, if not addressed in this Article shall only then be governed by the following, as may be amended:
2. Chapter 18A, Miami-Dade County Landscaping Ordinance and Landscape Manual
3. Chapter 18B, Miami-Dade County Right-Of-Way Landscape Ordinance
4. Chapter 24, Miami-Dade County (Town) Environmental Protection Ordinance
5. In instances where conflicts between Articles occur, the Director shall determine upon review of a proposed application which Article sections shall apply.

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## **Sec. 3-95. General Provisions**

1. Landscaping, trees, and plant material shall be planted and maintained in a healthy growing condition according to accepted horticulture practices. Any landscaping, trees, and plant material in a condition that does not fulfill the intent of these regulations, shall be replaced by the owner.
2. Adequate drainage and mulching shall be provided for planted areas. For adequate root growth, the base of the lot tree shall have a minimum pervious ground area of fifty (50) square feet for root growth and shall not be planted on slopes exceeding 4:1 horizontal to vertical distance.
3. Nothing shall be planted, installed or placed within a utility easement, drainage easement or right-of-way without the consent of the Town, Miami-Dade County or Florida Department of Transportation and the easement holder, as applicable.
4. Non-residential fences shall be supplemented with plantings following the five (5) to ten (10) foot buffer requirements of Sec. 3-102 (F).
5. Berms shall not exceed a 2:1 slope and stabilized with a ground cover or other vegetation. Berms using turf as a ground cover shall not exceed a 3:1 slope, horizontal to vertical distance.
6. No person may remove or modify any landscaping from or within a right-of-way without the consent of the Town.
7. All required landscaped areas shall be protected by six inch curbing when abutting surface parking pavement except as permitted to allow stormwater drainage. The width of all curbing shall be excluded from required landscaped areas.
8. Plants and trees shall only be pruned to promote healthy, safe, uniform, and natural growth of the vegetation and according to the National Arborists Association Standards. Root pruning shall be kept to an absolute minimum. Severely pruned trees (pruning more than 30 percent of the canopy) and shrubs shall be replaced by the owner in conformance with the Plant Material and Landscape Plan requirements of this Article.
9. Prior to approved removal of any lot tree for the purposes of development, expansions to existing development in accordance with the Environmental Survey and/or approved development plans, or if the tree is deemed unsafe to the property owner or adjacent properties, the owner shall give the Town first right of refusal to relocate the tree to public lands if the owner does not choose to relocate it.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

10. Property owners shall maintain all landscaped areas in a healthy growing condition. Property owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs that may constitute a menace to the public.

### **Sec. 3-96. Landscape Plan Required**

- (A) Landscape plans in accordance with this Article shall be approved by the Town prior to issuance of a building permit except as exempted herein.
- (B) The Application submittal shall include the following, as applicable;
  1. The landscape plan shall be drawn to a suitable scale sufficient in size to show all necessary detail and indicate property boundaries, north arrow, graphic scale and date.
  2. Environmental Survey, if applicable.
  3. Delineate existing and proposed structures, parking spaces, access ways and other vehicular use areas, sidewalks, utilities, easements, height of power lines on the property or adjacent property.
  4. Indicate the common and scientific name and quantity of plants to be installed, heights, spread and remarks providing information on the plant material to be installed.
  5. Identify all landscape features and non-living landscape materials.
  6. Illustrate geologic, historic, and archeological features to be preserved, if applicable.
  7. Depict stormwater retention/detention areas.
  8. Document zoning district, net lot area, and required open space.
  9. Show future canopy coverage and identify impervious areas required by this Article.
  10. Show building coverage and locations.
  11. The plan shall be prepared by and bear the seal of a landscape architect registered in the State of Florida for multi-family and non-residential development.

### **Sec. 3-97. Administration**

- (A) Landscaping and irrigation systems shall be completed in accordance with the approved landscape plans and installed prior to issuance of a Certificate of Occupancy for the site.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (B) The Town may grant installation exceptions and extensions due to unusual environmental conditions, such as drought, or over-saturated soil. When exceptions and extensions are provided, the developer or property owner shall provide the Town with a surety bond ensuring the installation of the uninstalled landscape materials and irrigation systems. In such cases, the Town may authorize a temporary Certificate of Occupancy for a period of thirty (30) to sixty (60) days.
- (C) Any bond posted as surety for exceptions and extensions shall be accompanied by documentation of the estimated cost of the uninstalled landscaping materials and irrigation systems. This documentation may be a landscaping contractor's bid or contract, a nurseryman's bill, or a similar document. The amount of the bond shall be one and one-half times the cost of the uninstalled plant material and irrigation system, based on the highest estimate received. The Town Manager is authorized to release part of any security posted as the improvements are completed and approved by the Town. Such funds shall be released within ten (10) days after the corresponding improvements have been approved.
- (D) A Certificate of Occupancy shall not be issued until installation of landscape materials and irrigation systems consistent with approved plans is completed and a final inspection is performed by the Town.

### **Sec. 3-98. Irrigation Plan Required**

- (A) Prior to installation of irrigation systems, the applicant shall submit an irrigation plan to the Town. The plan shall be drawn at the same scale as the landscape plan and indicate, but not be limited to, main, valve, and pump locations, pipe sizes and specifications, controller locations and specifications, backflow preventer and rain-sensing devices and include a typical sprinkler zone plan indicating type, specifications, spacing, and coverage. If drip irrigation or soaker hoses are proposed, their layout shall be shown.
- (B) During installation, irrigation systems shall be designed to avoid impacts with the root structures of existing vegetation. Field changes shall be made to avoid disturbances of such vegetation. These changes may include: line routing, sprinkler head placement and spray direction adjustments.

### **Sec. 3-99. Annual Inspections**

Code Enforcement shall inspect the site on an annual basis to ensure compliance with the approved site plan and to ensure that the landscape is properly maintained. Corrective actions will be required to be commenced within thirty (30) days of the notice of non-compliance and completed within sixty (60) days.



# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## **Sec. 3-100. Maintenance Responsibilities**

The owner shall be responsible for the installation, preservation, replacement and maintenance of all plantings and/or irrigation systems required by this Article. Plant material shall be maintained according to accepted horticultural practices. Any dead, unhealthy, or missing vegetation, or vegetation disfigured by pruning, shall be replaced with locally adapted vegetation which conforms to the standards of this Article and/or to the approved landscape plan. In the event that any vegetation and/or is severely damaged due to an unusual weather occurrence, disease and/or natural catastrophe, the owner shall inform the Town of the extent of such damage and shall have one growing season to replace or replant the vegetation and/or irrigation system.

## **Sec. 3-101. Environmental Survey**

- (A) Prior to preparation of development plans, an environmental survey, by a landscape architect registered in the State of Florida, shall be provided by the applicant to identify existing trees (natives, non-natives, restricted and prohibited as outlined in Miami-Dade Landscape Manual), under story vegetation, shrubs and groundcovers, known endangered plant species, wetlands, streams and creeks, floodplains and topographical features of a site. This enables the planned preservation of existing vegetation and natural features and their integration, to the maximum extent possible, with landscaping proposed for new development. At a minimum, the environmental survey shall include the following:
1. Provide a written description of vegetation measuring four (4) inches in Diameter at Breast Height (DHB) or greater, including species, size, spacing between trees, and general health and vigor of the vegetation.
  2. A plan or survey graphically identifying vegetation measuring four (4) inches in DBH or greater located on the site. The plan or survey shall include a schedule identifying the botanical name/common name of plant species, their height and spread, and disposition which among other things, indicates whether the vegetation is relocated, removed, or remaining at its current location.
  3. The plan or survey shall identify natural features, such as, but not limited to wetlands, streams, natural drainage ways, lakes, other water bodies, rock and stone formations, and the like.
  4. All new development, including public and private utilities, shall be integrated, to the maximum extent possible with the vegetation and natural features identified in the environmental survey.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## **Sec. 3-102. Types of Landscaping**

The types of landscaping are enumerated below and shall meet the following performance requirements. Where applicable, the provisions of (E) and (F) shall not apply to areas zoned Town Center [TC] and Transit Corridor [TRC].

- (A) Surface Parking. A landscaped area shall be provided along the perimeter of all parking, loading, drive, and parking storage areas. The landscape area shall have a minimum width of ten (10) feet and shall be planted with four (4) trees and thirty (35) shrubs per hundred (100) linear feet or fraction thereof. Plants, at the time of planting, shall cover the entire width of the area.
1. Landscaped areas shall be provided at the ends of each parking aisle. These areas shall be a minimum of 400 square feet for double aisle parking stalls and 200 square feet for single aisle parking stalls, have a minimum width of ten (10) feet and be planted with a minimum of one (1) tree and ten (10) shrubs per 200 square feet of area.
  2. Parking lots, loading areas, drive(s), and exterior storage areas shall be landscaped so that no parking lots, loading areas, drive(s), and exterior storage area is more than forty (40) feet from the base of a tree.
- (B) Building Perimeter. All multi-family, planned development and non-residential development shall provide building perimeter planting along the façade of buildings in the amount of 200 square feet per 1,000 square feet of building ground floor area. The building perimeter area shall be planted with a minimum of two (2) tree and twenty (20) shrubs per 200 square feet of area and have a minimum width of six (6) feet.
- (C) Street Tree Canopy. A tree canopy shall be required along streets serving multi-family, planned developments and non-residential uses as a unifying element to soften the transition from the public street to the private lot. The minimum requirements for street trees and their placement shall be found in the Town “Street Tree Master Plan” dated December 2008 as may be amended.
- (D) Residential Tree Canopy. Each lot shall provide trees in accordance with the schedule below. Required trees shall be planted within the front yard. Existing native and non-native (which are not restricted or prohibited) trees over 2.5 inches in Diameter Breast Height and ten (10) to twelve (12) feet in height may be counted towards fulfilling this requirement.

### *Lot area requirements*

Less than 15,000 square feet: three (3) trees

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15,000-25,000 square feet: four (4) trees

More than 25,000 square feet: four (4) trees plus one (1) tree for each hundred (100) linear feet of frontage of the front yard

- (E) Site Canopy Coverage. For multi-family, planned developments and non-residential developments, incorporating surface parking areas, existing and/or selected trees meeting the provisions of this Article shall cover a minimum of 30 percent of the remaining development site.
- (F) Buffer Area. A buffer area shall be required along boundaries of multi-family, non-residential and planned development lots abutting a less intensive use. Such lots shall comply with the following minimum standards.
1. The buffer area shall be located within the boundaries of the higher intensity use property. However, a maximum of 50 percent of the buffer area may be located on abutting property, provided the owners of all abutting properties agree in writing to the proposal. Said agreement shall be created by the applicant, reviewed by the Town; it must be recorded by the applicant and provide stipulations for perpetual maintenance and upkeep acceptable to the Town.
  2. The area indicated in the matrix below shall consist of trees and shrubs of a type, height, spacing and arrangement that effectively buffers the less intensive use lot from the more intensive use lot. At a minimum, the planting shall consist of six (6) trees and twenty (20) shrubs per hundred (100) linear feet for five (5) to ten (10) foot areas, ten (10) trees and thirty (30) shrubs per hundred (100) linear feet for fifteen (15) to twenty (20) foot areas, and twenty (20) trees and sixty (60) shrubs per hundred (100) linear feet for twenty-five (25+) foot areas.
  3. An earthen berm (as provided herein) or fence or wall of a design approved by the Department may be substituted to offset a portion of the required planting. Fences and walls shall be a maximum of six (6) feet in height and constructed of materials congruous with the materials of the main building. Trees and shrubs shall supplement earthen berms, fences, or wall areas at a minimum of 50 percent of the landscape material required for buffers. The landscaping shall be installed along the outside wall.
  4. Buffer areas shall follow the minimum width (in feet) matrix below:

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<i>Adjacent Use</i>	<i>Proposed Use</i>					
	<i>SF</i>	<i>TF</i>	<i>MF</i>	<i>OF</i>	<i>CM</i>	<i>IND</i>
SF	0	0	0	0	0	0
TF	5'	0	0	0	0	0
MF	15'	10'	0	0	0	0
OF	25'	15'	15'	0	0	0
CM	25'	20'	20'	15'	0	0
IND	30'	25'	20'	15'	15'	0

5. The existence of a canal or water body, alley, right-of-way, or easement shall not exempt property from the buffer requirements of this Article.

- (G) Screening of Outdoor Storage Areas. Outdoor storage areas shall be screened from the street, and from residentially zoned land using landscape materials to form a continuous screen which matches the height of the materials being stored and any structure within the enclosure. At a minimum, the landscape material planted shall be six (6) feet in height at the time of planting.
- (H) Screening of Mechanical Equipment. All non-residential, multi-family and planned development shall screen from view all mechanical equipment, such as but not limited to, ground or roof mounted air conditioning, backflow prevention devices, irrigation and similar pumps, through the use of features such as berms, fences, roof parapets, walls or landscaping. The height of the screening features shall match, or be greater than, the height of the mechanical equipment.
- (I) Screening of Public Utilities. All public utility appurtenances such as lift stations, relay boxes, ground mounted transformers, backflow prevention devices, and the like shall be screened from view.
- (J) Screening of Central Solid Waste Storage Area. Non-residential multi-family and planned developments shall provide facilities for the central storage of solid waste and recyclables within the lot. Where such facilities are provided outside, they shall be screened by an enclosure constructed of materials congruous with the development's building materials. The enclosure shall exceed the height of any storage container, but shall not exceed the tallest building height proposed for the development. The exterior wall shall be screened with landscaping six (6) feet in height at the time of planting.

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- (K) Unoccupied Lot Areas. All areas reserved for open space for new and existing development shall be improved with ground cover, trees, shrubbery or mulch. No exposed soils shall be permitted.

### **Sec. 3-103. Plant Material and Installation**

Plant material used to meet the requirements of this Article shall meet the standards for Florida Number 1 or better, as set out in grades and standards for nursery plants, Part I and Part II, Department of Agriculture, State of Florida – as amended. At least 75 percent of the trees and 50 percent of the shrubs used to fulfill these requirements on a site shall be native Southern Florida species. In addition, at least 75 percent of the trees and shrubs used to fulfill these requirements on a site shall be drought-tolerant species.

- (A) Trees and Shrubs. All trees shall be at least sixteen (16) to eighteen (18) feet in height and 2.5 inches in DBH at the time of installation, except evergreen trees used for screening and buffering. Evergreen trees used in these instances shall be six (6) to seven (7) feet in height at the time of installation. All shrubs shall be at least three (3) gallons in container size and two (2) feet in height for an upright growth habit shrub and six (6) to twelve (12) inches in height (and two (2) foot wide spread) for a horizontal growth habit shrub.
- (B) Tree Species Mix. The minimum number of species to be planted shall vary according to the number of trees planted. The minimum number of species mix to be planted is indicated below:

<i>Required Number of Trees</i>	<i>Minimum Number of Species Mix</i>
Under 10	1
11-20	3
21-30	4
31-40	5
41+	6

- (C) Existing Tree Credits. Existing native and/or (not restricted or prohibited non-native) trees may be credited equally towards meeting the planting requirements of this Article according to the matrix below:

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<i>DBH</i>	<i>Number of Tree Credits</i>
26+ inches	equal to 5, 2.5 inch caliper trees
20 to 25 inches	equal to 4, 2.5 inch caliper trees
12 to 19 inches	equal to 3, 2.5 inch caliper trees
5 to 11 inches	equal to 2, 2.5 inch caliper trees

NOTE: No credit shall be given for prohibited and restricted trees as outlined in the Landscape Manual or other legislation and trees located in identified natural preservation areas, and required to be preserved by federal, state, or local laws.

### **Sec. 3-104. Tree/Vegetation Protection**

A tree/vegetation and root protection plan prepared by a landscape architect registered in the State of Florida shall be submitted at the time of permit approval and be part of development plans/landscape plans where required by this Article. The tree/vegetation and root protection plan shall include details and specifications showing in graphic form how planting will be protected during development of the property. At a minimum, the plan shall indicate the following:

1. Tree protection barriers shall be placed around all trees identified by the tree/vegetation and root protection plan approved by the Town. These barriers shall be installed prior to grading, construction, or other land disturbing activity and cannot be removed until after final inspection by the Town. The barriers shall be constructed from any material substantial enough to protect the roots, trunk, and crown of the tree, such as 2x4 standards and 1x4 rails, silt fencing or orange silt fencing, a minimum four (4) feet in height on metal or wood posts. The barriers shall be placed at least one (1) foot from the tree trunk for each one (1) inch in tree diameter, with a minimum distance of ten (10) feet required from the edge of the trunk.
2. No soil disturbance or compaction, stock piling of soil or other construction materials, vehicular traffic, storage of heavy equipment are allowed in the tree/vegetation and root protection area or within the drip line of trees to be retained.
3. Dead trees and undesirable scrub growth shall be cut flush with adjacent grade and removed during construction. Tree stumps shall be ground with stump grinder or removed and filled.

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### **Sec. 3-105. Removal, Replacement, Relocation of Significant Vegetation**

- (A) Removal of specimen trees over 18 inches in diameter, significant shrubs over 12 inches in diameter, and native tree and shrub species over four (4) inches in diameter is permitted after obtaining site plan approval and/or in the event of hazards posed by vegetation a tree removal permit from Miami-Dade County shall be obtained.
- (B) The disturbance of any landscaped area or vegetation required by this Article shall constitute a violation. All disturbed landscaped areas and vegetation shall be replanted so as to meet the standards of this Article and/or the approved site plan for the development and/or property. Where the vegetation that has been disturbed or damaged existed on the site at the time the development was approved, all replacement vegetation shall meet the standards set forth in this Article.
- (C) Trees or landscape vegetation that die or are stressed shall be removed and replaced with new vegetation consisting of one or a combination of any of the following measures.
  - I. Replant according to the requirements of this Article and/or the approved landscape plan for the development. If no approved landscape plan for the development is on file with the Town, a landscape plan denoting the proposed vegetation replacement shall be submitted to the Town for approval. In addition, the following:
    - a. Replace damaged vegetation with an equal amount of new vegetation according to the size of vegetation removed. Any tree with a DBH of at least twelve (12) inches which is damaged or removed shall be replaced with one (1) or more trees which have a cumulative DBH equal to or greater than the original tree. A landscape plan denoting the proposed installation shall be submitted to the Department for approval.
    - b. Native and permitted non-native trees with a DBH of less than two and one-half inches and below eight (8) feet in height, shall not qualify as native or permitted non-native trees for the purpose of replacement.
    - c. Replanting of damaged tree/vegetation shall be located within the general vicinity of the removed tree or in a location approved by the Town.
    - d. Stop work orders shall also apply for damaging and/or destroying significant vegetation, interior specimen or significant vegetation, landscaping, or tree preservation areas.

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### **Sec. 3-106. Plant Lists**

Listings of all prohibited trees and plant material, native and approved non-native trees and approved shrubs and ground covers shall be found in the Miami-Dade County Comprehensive Development Master Plan Conservation, Aquifer Recharge and Drainage Element - Policy CON-8I (Prohibited species list), and the Miami-Dade County Landscape Manual, as may be amended.

See also Urban Trees for Florida, Florida Department of Agriculture and Consumer Services.

- (A) Prohibited trees and plant material are prohibited and shall be removed from sites and shall not be planted, grown, or offered for sale in the Town.
- (B) Native and approved non-native trees with a DBH of less than two and one-half inches and below sixteen (16) feet in height, and trees which are diseased or weakened by age or injury shall not qualify as approved native or non-native trees for the purpose of replacement.



## **Article VIII**

### **SIGN REGULATIONS**

#### **Sec. 3-110. Purpose**

It shall be the purpose of this Article to promote the aesthetics, safety, health, and general welfare and the assurance of protection of adequate light and air within the Town by regulation of the general posting, displaying, erection, use, and maintenance of signs. In the event of any conflict between this code and any declaration of covenants, bylaws, or other restrictions applying to any property within the Town, the language affording the more restrictive interpretation shall apply.

#### **Sec. 3-111. Substitution of Noncommercial Speech for Commercial Speech**

Notwithstanding any provisions of this Article to the contrary, to the extent that this article permits a sign containing commercial content, it shall permit a noncommercial sign to the same extent. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this Article.

##### **(A) Severability.**

1. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Article is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Article.
2. This subsection shall not be interpreted to limit the effect of the subsection above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. The Town Council specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the Town, whether by subjecting currently exempt signs to permitting or by some other means.

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3. This subsection shall not be interpreted to limit the effect of the subsections above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. The Town Council specifically intends that severability shall be applied to Sec. 3-113. "Prohibited Signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.
4. This subsection shall not be interpreted to limit the effect of the subsections above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. If any or all of this article or any other provision of the Town code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the Town Council specifically intends that the declaration shall not affect the prohibition on off-premises signs in Sec. 3-113.

### **Sec. 3-112. Sign Permits**

- (A) Permit Required. Except as provided in this Article, no permanent or temporary sign shall be erected, constructed, posted, painted, altered, maintained, or relocated until a permit has been issued by the Town.
- (B) Application Procedure. Before any permit is issued, a written application, in the form provided by the Town, shall be filed, together with such drawings and specifications as may be necessary to fully advise the Town with the location, construction, materials, manner of illuminating, method of securing or fastening, the number of signs applied for, the consent of the property owner, and the wording of the sign. Upon the submission of an application, the Town shall have ten days to determine whether it is complete. If the Town finds that the application is not complete, the Town shall provide the applicant with written notice of the deficiencies within the ten-day period. Upon resubmission of the application, the Town shall have five additional days to determine whether the applicant's revisions are sufficient to complete the application. If they are not, the Town will again inform the applicant of any remaining deficiencies in writing. This process shall continue until the applicant has submitted a complete application, or demands that the application be reviewed "as is."
- (C) Code Requirements. All signs shall be constructed in accordance with the Florida Building Code, including obtaining all required permits. No sign shall be approved for

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use unless it has been inspected and found to be in compliance with all the requirements of this article and applicable codes.

- (D) Application Review. The Town shall approve or deny the sign permit based on whether it complies with the requirements of this Article. The Town shall approve or deny the Sign permit within thirty (30) business days after receipt of a complete application. If denied, the Town shall prepare a written notice of its decision, describing the applicant's appeal rights, and send it by certified mail, return receipt requested, to the applicant. The applicant may file a written notice of appeal to the Town Council within thirty (30) business days after the date of receipt of the Town's written notice. The Town Council shall hold a public hearing at the next available Council meeting that is at least twenty-five (25) business days after the date of receiving the written notice of appeal, at which the Town Council shall determine whether the application satisfies all code requirements. If the Town Council denies the application, then the applicant may seek relief in a court of competent jurisdiction.
- (F) Failure to Commence. Each sign permit issued by the Town shall become null and void, if installation is not commenced within ninety (90) business days from the issuance date of such permit. If no work authorized by such permit takes place for any continuous ninety (90) day period (business days) any time after the work has commenced, a new sign permit shall be required prior to resuming the work, and the fee will be the full amount required for a new permit for such work.
- (G) Signs Exempt from Permitting Requirement. The following signs may be erected or constructed without a sign permit when in accordance with the Florida Building Code and this Article:
1. Official traffic, governmental information, and provisional warning signs or sign structures, when erected or required to be erected by a governmental agency.
  2. Reserved parking and fuel efficient parking signs.
  3. Temporary signs indicating danger or warning of a hazardous physical condition to pedestrians, bicyclists and motorists.
  4. Election signs.
  5. Real estate sales signs and real estate leasing signs.

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6. Any sign located within a building, lobby or courtyard and not visible from off site. However, such signs are not exempt from the structural, electrical or material specifications as set forth in this code and the adopted Florida Building Code.
7. Flags, whether displayed on poles or in another fashion. Installation of a permanent flag pole or other permanent mounting device shall require a building permit. If the flag pole or device is located on property zoned for other than single family residential uses, the location of the flag pole or device must be shown on the site plan for the property.
8. Seasonal decorations in residential areas.
9. To the extent that this subsection allows a sign displaying commercial content to be exempt from permitting, it shall allow a sign with the same size, length of display, appearance, location, display area, and other physical characteristics to be exempt from permitting if it displays noncommercial content.
10. Special event signs not exceeding six (6) square feet in area will not require a permit.

### **Sec. 3-113. Prohibited Signs**

- (A) Prohibited signs by location. Unless otherwise authorized, the following signs shall be prohibited:
1. Roof signs;
  2. Signs that extend above the parapet or roof of a building;
  3. Signs that obstruct the view of a public safety or directional sign, or traffic-control device;
  4. Signs that obstruct any window, door, fire escape, stairway, or opening intended to provide light, air, ingress, or egress for any building that would cause a violation of the Florida Building Code;
  5. Any vehicle sign affixed to a vehicle that can be viewed from a public right-of-way and remains stationary for a period in excess of twenty (24) hours, excluding weekends and holidays;

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

6. Signs that are towed behind a vehicle; and

7. Signs located on a fence or tree.

(B) Prohibited signs by type. Unless otherwise authorized, the following signs shall be prohibited:

1. Signs that do not comply with the provisions of this Article;

2. Pole signs;

3. Signs on lots without a principal use;

4. Fixed projecting signs;

5. Any projected sign;

6. Signs that may be confused with a public safety or directional sign, or traffic control device;

7. Animated signs;

8. Signs that emit a sound, odor, or visible matter such as smoke or vapor;

9. Snipe signs;

10. Obsolete signs, abandoned signs, or dilapidated signs;

11. Signs that are portable or unattached to a building or the ground;

12. Signs that are inflatable;

13. Signs that contain a visible light source;

14. Signs containing exposed neon or exposed light emitting diodes (LED);

15. Externally illuminated signs where lighting is not recessed in the ground;

16. Signs with an internally illuminated cabinet;

17. Off-premises signs;

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

18. Any sign, other than gas station price signs, containing changeable content;
19. Banner signs located on a residentially zoned property;
20. Painted signs; and
21. V-shaped point of sale signs.

### **Sec. 3-114. Permanent Signs**

- (A) Residential uses. The following standards apply to all permanent signs on residential lots and uses.

<b>TYPE OF USE</b>	<b>SIGN TYPE</b>	<b>MAXIMUM NUMBER</b>	<b>MAXIMUM AREA (sq. ft.)</b>	<b>MAXIMUM HEIGHT (ft.)</b>
Multi-family complex other group living	Monument and/or Building mounted	One per main entrance	32 (Monument) 16 (Building mounted)	6 (monument)
Subdivisions, master planned developments	Monument	One per main entrance	32	6

- (B) Non-residential uses. The following standards apply to all permanent signs on the site of non-residential uses.

<b>TYPE OF USE</b>	<b>WALL SIGNS</b>	<b>MONUMENT SIGNS</b>	<b>DIRECTORY SIGNS</b>	<b>DIRECTIONAL SIGNS</b>
OFFICE, INSTITUTIONAL	max. no.: 1 per wall face, or 2 for walls over 50 ft. in length  max. total signage area: 10% of wall face or 50 sq. ft., whichever is less  max. height: n/a	max. no.: 1 per street frontage  max. area: 40 sq.ft.  max. height: 6 ft.	max. no.: 1 per building  max. area: 18 sq. ft.  max. height: 6 ft.	max. no.: 1 per vehicular access point  max. area: 8 sq. ft.  max. height: 4 ft.
FREESTANDING COMMERCIAL	max. no.: 1  max. total signage area: 10% of wall	max. no.: 1 per parcel;  for parcels over 1.5 acres, 1 sign per	max. no.: 1 per building  max. area: 18 sq. ft.	max. no.: 1 per vehicular access point  max. area: 8 sq. ft.

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	face or 40 sq. ft., whichever is less  max. height: n/a	street frontage  max. area: 40 sq. ft.  max. height: 6 ft.	max. height: 6 ft.	max. height: 4 ft.
RETAIL SHOPPING CENTER	max. no.: 1 per first floor store front  max. total signage area: 50% of length of storefront, not to exceed 20 sq. ft.  max height: 18 in.	max. no.: 1 per street frontage  max. area: 40 sq. ft.  max. height: 6 ft.	max. no.: 1 per building  max. area: 18 sq. ft.  max. height: 6 ft.	max. no.: 1 per vehicular access point  max. area: 8 sq. ft.  max. height: 4 ft.
REGIONAL SHOPPING CENTER	max. no.: 1 per first floor store front  max. area: 50% of length of storefront, not to exceed 200 sq. ft.	max. no.: 1 per street frontage  max. area: 64 sq. ft.  max. height: 8 ft.	max. no.: 1 per building  max. area: 18 sq. ft.  max. height: 6 ft.	max. no.: 1 per vehicular access point  max. area: 8 sq. ft.  max. height: 4 ft.
MIXED USE	max. no.: 2 wall signs identifying the name of the center or tenants shall be permitted at the top of the building below the roof line. In addition, ground floor retail stores or offices will be allowed one sign per tenant  max. area: signs above first floor, 10% of wall face or 50 sq. ft., whichever is less, no sign may exceed	max. no.: 1  max. area: 40 sq. ft.  max. height: 6 ft.	max. no. 1 per building  max. area: 18 sq. ft.  max. height: 6 ft.	max. no.: 1 per vehicular access point  max. area: 8 sq. ft.  max. height: 4 ft.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

	50% of the lineal building frontage; first floor signage consistent with retail shopping center above.  max. height: n/a			
Non Residential Uses On Old Cutler Road	Except as otherwise provided in this Article, signs shall be erected in accordance with Chapter 74-400, Laws of Florida, as follows: No sign may be erected within 300 feet of either side of the paved surface of the road, except the following: (1) Official road signs, including traffic control devices, erected by the Department of Transportation or by the City or County having jurisdiction over the portion of the road involved; (2) Signs not visible from the road; (3) Markers indicating points of historical interest erected or approved by the division; (4) Signs that do not exceed 6 (six) square feet in area advertising the sale or lease of the property upon which they are located; or (5) Signs advertising only the name or nature of the business being conducted upon or the products, facilities, goods or services being sold, supplied, or distributed upon or from the premises where the signs are located, if such signs do not exceed a total of thirty square feet in area for any one business.			

(C) Uniform Sign Plan. All signs in multi-tenant projects shall be subject to submitting a uniform sign plan, available for inspection at the Town's Community Development Department, and shall comply with the following:

1. All signs mounted to a building shall be uniform in terms of illumination, material, fabrication and sign area.
2. All lettering on signs shall be comprised of not more than one font style except for registered stylized trade or service marks.
3. The sign plan shall be limited to no more than three (3) colors that are consistent with the surrounding architectural standards.

(D) Permanent Real Estate Leasing Signs. A permanent real estate leasing sign shall be permitted subject to the following requirements:

1. Such signs shall have the following sign area: multi-family residential two (2) square feet; commercial property four (4) square feet; and office twenty (24) square feet.
2. Such signs shall only identify the name and telephone number of the property manager, property owner, broker, or leasing agent.



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (E) Automated Teller Machines (ATM). ATMs may only have the name of the banking institution up to one (1) square foot and other instructional information up to one square foot.
- (F) Noncommercial Political Signs
  - 1. On residential property, two (2) noncommercial political signs per issue per lot may be erected on a property. The maximum sign area shall be two square feet and maximum height shall be four feet.
  - 2. On nonresidential property, one noncommercial sign per issue per lot may be erected. The maximum sign area shall be sixteen (16) square feet and maximum height shall be six (6) feet.
- (G) County Signs in the Town Center. The provisions of this Article are not applicable to “on premises” signs located on County property and within the boundaries of the Town Center District.
- (H) Monument Sign Construction and Landscaping
  - 1. The base of all permanent monument signs shall be solid CBS and stucco construction. Structural components shall not be covered by a material that is high gloss, reflective, or illuminated to the extent that it may be a hazard to safety. The solid ground-mounted base of a monument sign shall be equal to or greater than the length of the sign face.
  - 2. If a monument sign is not placed in an area of required landscaping, a planting bed at least two (2) feet in width shall surround the sign. This bed shall contain shrubs and supplemental ground cover, and shall be shown on the site plan. If the base of the sign is less than thirty (30) inches wide, the landscaping must be equal to the height of the base, subject to the approval by the Director. In no case shall the planting be less than eighteen (18) inches in height.
  - 3. An application for a monument sign shall include an accurate and up-to-date survey of the property indicating the lot dimensions, the proposed location of the sign with all setbacks to property lines, and a landscaping plan, if required.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## Sec. 3-115 Flag Display Standards

(A) Maximum height. Except as otherwise provided herein, flags shall be displayed on flagpoles. Such poles in nonresidential zoning districts shall not exceed the allowed height of the zoning district or sixty (60) feet, whichever is less. Flagpoles may not be placed on top of buildings or light poles. Flagpoles in residential districts shall not exceed twenty (25) feet.

(B) Maximum number and size.

1. The maximum dimensions of any flag shall be proportional to the flag pole height. The hoist side of the flag shall not exceed 20 percent of the vertical height of the pole. In addition, flags are subject to the following dimensional limitations:

Pole Height	Maximum Flag Size
Up to 25 feet	24 total square feet
25 to 39 feet	40 total square feet
40 to 49 feet	60 total square feet
50 to 60 feet	150 total square feet

2. Each property that is equal to or less than a lot area of 7,500 square feet shall be allowed a maximum of one (1) flagpole. For all other properties, a maximum of two flags shall be allowed per flagpole. References to flagpole height in this subsection refer to vertical flagpoles. References to the number of flags and flagpoles and flag dimensions refer to both vertical flagpoles and mast-arm flagpoles (for example, staffs extending at an angle from a building).

(C) Flags on permanent fixtures other than poles. Flags that are attached to the side of a structure without a pole shall not, individually or cumulatively, cover more than the greater of twenty (24) square feet or 10 percent of the facade of the structure on which the flag is mounted. One (1) flag is permitted on up to two (2) building facades.

(D) Setback. A vertical flagpole must be setback a minimum of five (5) feet from all property boundaries.

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- (E) Condition of Flag and pole or other permanent mounting. The flag and flagpole or other permanent mounting shall be maintained in good repair. Flagpoles with broken halyards shall not be used, and torn or frayed flags shall not be displayed.

### **Sec. 3-116. Window Signs**

A window sign that identifies the business or activity on the premises by name or symbol is permitted, subject to the following provisions:

- (A) Office. The signs shall not exceed an aggregate area equal to 5 percent of the window glass area on which they are located. Such signage is limited to the name of the business and its suite number or address, and shall be uniform within a multi-tenant center.
- (B) Retail/Commercial. The signs shall not exceed an aggregate area equal to 20 percent of the window glass area on which they are located.

### **Sec. 3-117. Directional Signs**

Directional signs shall only display directional information and logos.

### **Sec. 3-118. Hanging Signs**

1. Hanging signs shall only be permitted to the extent allowed under the applicable approved uniform sign plan.
2. The only text permitted on a hanging sign shall be one of the following:
  - a. The business' trade name;
  - b. The franchise name; or
  - c. The primary product or service.

### **Sec. 3-119. Temporary Signs**

- (A) Real Estate Sale and Real Estate Leasing Signs.

Regulations	Residential District	Nonresidential District
Permit Required	No	No
Maximum Number	One sign per building or parcel	One sign per building or parcel
Maximum Sign Area	Six square feet	40 square feet
Maximum Height	Five feet	10 feet
Maximum Duration of Display	Signs shall not be erected until	Signs shall not be erected until the

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	the property is offered for sale, rent, or lease, and shall be removed within three days of closing or the signing of a lease agreement.	property is offered for sale, rent, or lease, and shall be removed within three days of closing or the signing of a lease agreement.
Other Restrictions	Signs shall only identify the name and telephone number of the property manager, property owner, broker, and leasing agent or as otherwise required by state law.	Signs shall only identify the name and telephone number of the property manager, property owner, broker, leasing agent, or as otherwise required by state law. On commercial or office properties where a permanent real estate leasing sign does not exist, a temporary real estate leasing sign may only be placed in the window of the ground floor premises that is being offered for lease. In retail shopping centers where a permanent real estate leasing sign does not exist, a temporary real estate leasing sign may only be placed in the window of the ground floor premises that is being offered for lease.

### (B) Construction Signs.

<b>Regulations</b>	<b>Residential District</b>	<b>Nonresidential District</b>
Permit Required	No	No
Maximum Number	One free standing sign per construction site	One free standing sign per construction site
Maximum Sign Area	16 square feet	16 square feet
Maximum Height	Eight feet	Eight feet
Maximum Duration of Display for Freestanding Signs	Free standing signs shall not be erected prior to the issuance of a building permit for the project, and shall be removed within three days after the date of the issuance of a certificate of occupancy or certificate of completion, whichever occurs first.	Free standing signs shall not be erected prior to the issuance of a building permit for the project, and shall be removed within three days after the date of the issuance of a certificate of occupancy or certificate of completion, whichever occurs first.
Maximum Duration of Display for Signs on Trailers or Temporary Storage Facilities	Signs on trailers or temporary storage facilities located at construction sites are only permitted while a building or engineering permit is in effect for that site.	Signs on trailers or temporary storage facilities located at construction sites are only permitted while a building or engineering permit is in effect for that site.
Other restrictions	Any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor, or materials vendor upon which property such individual is furnishing labor, services, or material.	Any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor, or materials vendor upon which property such individual is furnishing labor, services, or material.

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### (C) Election Signs.

<b>Regulations</b>	<b>Residential</b>	<b>Nonresidential</b>
Permit Required	No	No
Maximum Number	One free standing sign per candidate or issue per property.	One free standing sign per candidate or issue per property.
Maximum Sign Area	22 by 28 inches	16 square feet
Maximum Height	Four feet	Six feet
Maximum Duration of Display	A sign shall be erected no more than 90 days prior to the election and shall be removed no more than three days after the election.	A sign shall be erected no more than 90 days prior to the election and shall be removed no more than three days after the election.
Other restrictions	Signs shall not be permitted in public or private rights-of-way. The Town has the authority to remove such advertisements, and may charge the candidate the applicable fee for such removal.	Signs shall not be permitted in public or private rights-of-way. The Town has the authority to remove such advertisements, and may charge the candidate the applicable fee for such removal.

### (D) Special Event or Banner Signs.

<b>Regulations</b>	<b>Nonresidential District</b>
Permit Required	Yes
Maximum Number	No more than one sign per tenant
Maximum Sign Area	16 square feet
Maximum Height	Six feet, except banner signs may be 12 feet.
Maximum Length of display	30 days and removed 3 days after the event
Other restrictions	Four times in any 12-month period

### (E) Nonresidential Banner Signs on Old Cutler Road.

<b>Regulations</b>	<b>Nonresidential District</b>
Permit Required	Yes. The permit shall include a copy of the business tax receipt for the business.
Maximum Number	One sign per business.
Maximum Sign Area	16 square feet.
Maximum Height	Not to extend above the lowest point of the roof.
Length of display	Such signs may be authorized by the Town for: (1) 14 consecutive days; and (2) six times in any 12-month period.

## **Sec. 3-120. Architectural Embellishments**

(A) Generally. Architectural embellishments added to a structure for the purpose of conveying a message as to the purpose of the building, or to attract attention to the building, shall be treated as signs, and must comply with Sec. 3-112 and shall be subject to the standards set forth in Sec. 3-114.

(B) Requirements. All applications for approval of architectural embellishments shall meet the following requirements:

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1. Architectural embellishments shall be consistent with the design of the building and compatible with the building and surrounding structures.
2. No written messages, logos, arrows, flags, banners or bare bulbs shall be part of the architectural embellishment.
3. Architectural embellishments shall be applied and constructed strictly in accordance with the site plan. Any deviation from the approved plan or rendering, in materials or style, will require removal of the architectural embellishment pursuant to (Code compliance).
4. The addition of architectural embellishments to an existing structure shall require an amendment to the existing site plan and shall be processed accordingly.

### **Sec. 3-121. Sign Placement**

(A) Location. All signs and sign structures shall be located completely within the boundaries of the site on which the principal building is located.

(B) Setbacks. Freestanding signs that are permanent signs may be placed in required setbacks, provided that no sign shall be permitted within ten feet of any adjacent property line, within setbacks adjacent to residential lots, or within required corner sight distance triangles. Signs located in private easements shall require permission of the easement holder.

(C) No obstruction.

1. Obstruction to exits. No sign shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window or door opening used as a means of egress.
2. Obstruction to ventilation. No sign shall be attached in any form, shape or manner that will interfere with any opening required for ventilation.

### **Sec. 3-122. Sign Design and Maintenance**

- (A) Sign integration. All signs shall be designed as an integral part of the total building or project.
- (B) Colors. All signs for a single-tenant building shall contain no more than four different colors (including the background color) consistent with the surrounding architectural

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standards. White, black, and different shades of the same color shall be considered separate colors. Color samples must be submitted with any application for sign review.

- (C) Logos. A logo(s) may be used in lieu of a permanent sign or as a part of a permanent sign subject to the following provisions:

1. Logo(s) Used in Lieu of a Permanent Sign. A logo(s), used in lieu of a permanent sign, shall be subject to the permanent sign regulations for maximum number, area, and height.

2. Logo(s) Used as a Part of a Permanent Sign. The dimensions of a logo(s), used as a part of a permanent sign, shall be counted towards and contained within the maximum area and height allowed for the permanent sign.

- (D) Reverse channel lettering. Casing may be any approved color. Illumination shall be white.

- (E) Materials. Materials used for monument sign structures shall be consistent with to the materials, color, and fabrication used in any wall signage on the principal buildings on the site.

- (F) Illumination.

1. Within 500 feet of a lot containing a residential dwelling, no sign shall be illuminated after 11:00 p.m. or the close of business, whichever occurs last. This provision shall not apply to residential monument signs.

2. Signs that are externally illuminated shall have a lighting fixture that is recessed in the ground. No portion of said fixture may be installed to remain above the surrounding grade.

3. Light sources used to illuminate signs shall not be visible from nearby rights-of-way or properties.

4. Signs shall not be constructed of any light-reflective letters or materials.

5. No back lighting of awning or canopy signs shall be allowed.

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6. Signs that are illuminated shall utilize the most energy efficient means currently available.

(G) Maintenance.

1. All signs shall be maintained as originally permitted and constructed.

2. No person shall have any sign that is in a dangerous or defective condition on any premises he or she owns or controls. Within ten (10) days of receiving notice of lack of maintenance, all signs shall be maintained in a safe presentable and good structural condition, including the replacement of defective parts, repainting, cleaning and other acts required for the maintenance of said sign. If the sign is not made to comply with the above standards, the Town shall require its removal in accordance with Sec. 3-124.

3. Except as otherwise provided in this Article, any on-premise sign located on property that becomes vacant and unoccupied for a period of three (3) weeks or more, or any sign that pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed in accordance with Sec. 3-124.

### **Sec. 3-123. Signs within the Rights-of-Way and on Public Property**

(A) Exceptions:

1. Emergency warning signs erected by a governmental agency, public utility, or contractor authorized to work within the right-of-way.

2. Public signs erected by or on behalf of a governmental entity to post legal notices, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic.

3. Informational signs of a public utility regarding its poles, lines, pipes, or other facilities.

4. Signs that are expressly allowed pursuant to a contract with the Town.

5. Signs that are expressly allowed in a Town-issued special event permit, and that relate to the event covered by the permit.



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## **Sec. 3-124. Non-Complying Signs**

Any sign installed or placed on public property, except in conformance with the provisions of this Article, or any sign or sign structure that does not comply with the requirements of this Article, shall be forfeited to the public and subject to confiscation. In addition to other remedies, the Town shall have the right to recover from the owner or person responsible for the placement of the sign the full costs of its removal and disposal.

## **Sec. 3-125. Automatic Changing Signs**

Subject to the following mandatory conditions, automatic electric changing signs ("ACS"), shall be permitted in mixed-use districts only, in accordance with the following requirements:

- (A) An ACS may be an on-premise sign only. A detached ACS shall be of a monument type and shall comply with the sign height and size regulations for monument signs.
- (B) An ACS shall conform to all sign size, placement, setback, and quantity limitations as provided elsewhere in this article and shall comply with all Florida Building Code requirements.
- (C) Incandescent lamps/bulbs in excess of nine (9) watts are prohibited in an ACS. Incandescent lamps/bulbs in an ACS shall not be exposed but shall be covered by a translucent lenses or filters.
- (D) The maximum brightness of an ACS shall not exceed illumination of 3,500 nits (candelas per square meter) during daylight hours, nor 750 nits between dusk to dawn, as measured by applying a spectroradiometer (light meter) directly to the sign face at maximum brightness. The ACS must be equipped with an automatic dimmer control to produce a distinct illumination change from a higher illumination level to a lower level for the time period between one half hour before sunset to one half hour before sunrise. An ACS shall be equipped with an automatic operational night dimming device.
- (E) The following operating modes are prohibited:
  - 1. Flash -- the condition created by displaying the message intermittently by turning it on and off, on and off, with rapidity, or any other delivery mode that creates a flashing effect.
  - 2. Zoom -- the look or condition created by expanding a message from a central point to its full size.
  - 3. Any signs which use the word "stop" or "danger" or imply the need or requirement of stopping, or which are copies or imitations of official signs.

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4. Red, green or amber (or any color combination thereof) revolving or flashing light giving the impression of a police or caution light.
5. A minimum of ten (10) acres gross improved land area shall be required for the placement of an ACS.
6. An ACS shall be located only on an arterial roadway as depicted on the adopted Growth Management Plan Future Land Use Map Series.
7. The applicant for an ACS shall file a declaration of use, on a form prescribed and approved by the Director, which will govern the operation of the ACS and contain penalties for abatement and removal of the ACS for violations of the declaration of use and the provisions of this article.

### **Sec. 3-126. Residential Development Entrance Features**

Notwithstanding any other provision of this Article, residential development incorporating an entrance feature shall comply with the following standards.

- (A) Entrance features shall be placed so as not to encroach upon utility lines or traffic control devices whether such lines or devices are located overhead or underground; and where a conflict is encountered, the developer or designated property owner shall be responsible for the removal or relocation of the said features or a part thereof.
- (B) Entrance features shall be placed so as not to cause a visual obstruction and thereby create a traffic hazard, and should the use of illumination be incorporated in said features, such illumination shall be placed so as to be unobtrusive to moving traffic lanes or adjacent properties.
- (C) The character and scale of entrance features shall be of a design such that said features are complementary to the identified development and compatible with the immediate neighborhood insofar as its overall impact is concerned.
- (D) All structures within entrance features shall meet all standards of the Florida Building Code and any other applicable standards, and all water bodies with depths greater than eighteen inches shall meet all applicable standards of this chapter, applicable to reflecting pools and water features, standards.
- (E) Applications for permits for entrance features shall be made by the fee owner of the property in question and submitted to the Department. Applications shall include an accurately dimensioned site plan identifying all structures and landscaping incorporated

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in said features and identifying all setbacks and elevations of the same, including any wall or monument sign proposed.

1. Upon receipt of all necessary information, the Department shall review the application, and render a decision either approving, modifying, or denying the request.
  2. The applicant, or any aggrieved property owner in the area, may appeal the decision to the Town Council, in the manner provided for appeals of administrative decision.
- (F) Entrance features may be placed within public rights-of-way provided prior approval is granted by the Public Works Director along with the following.
1. An approval shall include a bond submitted to the Public Works Director in an amount to cover the removal of said features if deemed necessary at a later date by the Town. The bond shall have an initial ten-year life and shall be renewed for five (5) year periods thereafter.
  2. An executed covenant, stating that all structures shall be maintained in good condition and repair and that all landscaping shall likewise be so maintained, shall be delivered to Public Works Director for review and, upon approval, shall be duly recorded prior to the issuance of any permits.
- (G) Entrance features placed on private property shall be continually and properly maintained by the owners. To assure proper maintenance an executed covenant, stating that all structures shall be maintained in good condition and repair and that all landscaping shall likewise be so maintained, shall be delivered to the Department for review and, upon approval, shall be duly recorded prior to the issuance of any permits.

### **Sec. 3-127 Sign Amortization**

It is the intent of this section to recognize that the eventual elimination of certain existing signs that are not in conformity with the provisions of these regulations, in as expeditious a manner as is reasonable, bears as much relation to the health, safety, and welfare of the citizens of the Town as the prohibition of new signs that would violate these regulations. It is also the intent of this section to protect private property rights to the extent required by law. This procedure shall not apply to off-premises signs governed by the provisions of Section 70.20, Florida Statutes (2002).

- (A) These sign amortization procedures shall apply to v-shaped point of sale signs, pole signs, and attached and freestanding signs including exposed or visible neon light tubing,

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as prohibited by Sec. 3-113 of this Article. This procedure shall not apply to off-premises signs governed by the provisions of Section 70.20, Florida Statutes (2002).

- (B) Subject to the sign amortization schedule below, a nonconforming v-shaped point of sale sign, pole sign, and attached or freestanding sign including exposed or visible neon light tubing may be continued for the length of the applicable amortization period, and shall be maintained in good condition, and shall conform with the regulations applicable to nonconforming structures in the Town.
- (C) All nonconforming v-shaped point of sale signs, pole signs, and attached and freestanding signs including exposed or visible neon light tubing in existence upon the effective date of the prohibition on such signs as adopted by these Land Development Regulations, and which previously conformed to all legal requirements, but which are made nonconforming by the provisions of these regulations, shall be brought into conformity or shall be removed in accordance with the following amortization plan.
- (D)

<i>Schedule of time periods for removal, replacement, or alteration of signs subject to amortization procedures based upon the cost of original installation</i>	
<b>Cost of Original Installation</b>	<b>Time Period to Conform</b>
\$0-500	6 months
\$500-\$999	1 year
\$1,000 -\$7,000	2 years
\$7,001 and \$19,999	3 years
\$20,000 and over	5 years

- (E) Procedure for enforcement of amortization requirements.

(1) This section shall apply to all zoning districts within the Town. The amortization schedule provided for in this section shall apply to those properties that did not receive an amortization letter pursuant to Ordinance No. 08-14. Properties that did receive an amortization letter pursuant to Ordinance No. 08-14 shall be required to amortized the applicable sign(s) in accordance with the timeframe provided for in such letter or as otherwise extended, in writing, by the Director.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

The amortization schedule applicable to each sign determined to be subject to this subsection shall be determined by the Director or his or her designee based upon a review of building permits to determine the original cost of installation of the sign. If an original building permit is not available, the value will be determined by the professional estimation of the Town's Building Official. The period of nonconformity shall begin as of the effective date of this Article. Prior to the Town enforcing the amortization period against any sign, it shall be the responsibility of the Director, or his or her designee, to make an inventory and a record of all nonconforming signs subject to the amortization requirement and to serve notification of the commencement of amortization regulations on the owners of such signs. Such inventory shall include the following information:

- a. Owner;
- b. Location; and
- c. Valuation.

(2) An owner of a sign who desires an amortization period longer than that specified in the amortization schedule shall file an application for extension with the Community Development Department within thirty (30) days of notification of the commencement of amortization regulations. The application shall be on a form provided by the Department, and shall include a statement setting forth the cost of the nonconforming sign, the date of installation, and/or the cost and date of the most recent renovation. An extension of an amortization period may be granted if the Director finds that, with regard to the individual sign at issue, the amortization period set forth in this ordinance is unreasonable. The Director's decision may be appealed to the Town Council by the applicant within thirty (30) days of the determination.

- (F) Window Signs. Window signs shall be brought into compliance with the provisions of this Article within 180 days of the Code adoption.

## **Article IX**

### **TRANSPORTATION REQUIREMENTS**

**Sec. 3-130. Purpose**

This Article encourages the development of a network of interconnecting streets that work to disperse traffic while connecting and integrating neighborhoods with the existing urban fabric of the Town. Equally important, the Article encourages the development of a network of sidewalks and bicycle lanes that provide an attractive and safe mode of travel for cyclists and pedestrians. Interconnecting street networks encourage alternate modes of transportation to the automobile, enhance transit service opportunities, improve traffic safety through promoting slower speeds, and potentially reduce vehicle miles traveled within the street network.

**Sec. 3-131. Spatial Relationship**

As the most prevalent and visual public spaces in the Town, streets should be spatially defined by buildings. Proper alignment and delineation of the public street space occurs when the facades of adjacent buildings are aligned much like the walls forming a room. Buildings that make up the street edges are aligned in a disciplined manner. The defined space observes a certain ratio of height to width. Building articulation must take place primarily in the vertical plane of the facade.

**Sec. 3-132. General Principles**

The Town views streets as the most important public spaces and therefore has developed the following set of principles which permit this space to be used by both vehicles and people.

- (A) Streets are designed to be only as wide as necessary to accommodate the vehicular mix serving adjacent land uses, while providing adequate access.
- (B) Whenever an irreconcilable conflict exists among vehicular and pedestrian usage, the conflict should be resolved in favor of the pedestrian; unless in the best interest of public safety.
- (C) The uses of traffic calming devices are strongly preferred as alternatives to conventional traffic control measures. The Public Works Director may permit minor variations and exceptions to street engineering and design specified, such as but not limited to variations to the pavement width, tree planting areas, street grade, sight distances, and centerline radii in accordance with principles above. Right-of-way widths should be preserved for continuity.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (D) Closed or gated streets are discouraged.
- (E) Private streets may be allowed within developments that will remain under common ownership, provided they are designed, constructed and maintained pursuant to best management practices approved by the Town Public Works Director.
- (F) Streets in proposed subdivisions shall be connected to rights-of-way in adjacent areas to allow proper inter-neighborhood traffic flow by means of a collector street. If adjacent lands are unplatted, stub-outs in the new development shall be provided for future connection to the adjacent unplatted land.
- (G) The developer shall deposit with the Town sufficient funds to provide all necessary roadway related infrastructure signs as may be required by Town, County or state standards.
- (H) At least two street name signs shall be placed at each four-way street intersection, and one at each T intersection. Signs shall be installed near light standards and free of visual obstructions. The design of street name signs shall be consistent, in a style appropriate to the community, and of uniform size and color.

### **Sec.3-133. Design Specifications**

Streets shall be designed to permit comfortable use by motorists, pedestrians, and bicyclists. Street widths, design speeds, and the number of motor travel lanes shall be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the building types which have frontage and the relationship of the street to the overall Town street network. New development with frontage on existing publicly maintained streets shall be required to build to the standards of this Article.

- (A) Transportation system. All required elements of the transportation system shall be provided in compliance with the engineering design and construction standards contained in the Public Works Manual and related standards of Miami-Dade County, latest issue.
- (B) Right-of-way requirements. Right-of-way locations for collector and arterial roads are identified in the Transportation Element of the Town Growth Management Plan, on file in the Community Development Department. Where roadway construction, improvement, or reconstruction is not required to serve the needs of the proposed development project, future rights-of-way shall nevertheless be reserved for future use.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (C) Traffic control plans. Traffic control plans showing signage and pavement markings shall be prepared in accordance with the guidance of the Manual on Uniform Traffic Control Devices and shall be prepared by the Public Works Department.
- (D) Design speed. Design speeds should not exceed thirty-five (35) miles per hour on any street serving residential uses. Only streets serving predominately commercial and non-residential land uses may exceed this design speed.
- (E) Connectivity. All or most proposed streets within the network shall form an interconnected pattern and shall connect with the adjacent street pattern. Connectivity shall be assessed by the ability to provide multiple routes, diffuse traffic, and shorten pedestrian walking distances. A properly designed street network, unless prohibited by the existing street layout should provide a minimum of two (2) routes of access for a given location. This affords a high level of accessibility for emergency vehicles and appropriate service routing for school buses and transit.
- (F) Intersections.
  - 1. All streets shall intersect as nearly as possible at right angles (90 degrees) and no street shall intersect at less than 75 degrees. Where a centerline offset occurs at an intersection a traffic circle is strongly preferred. Otherwise, the distance between centerlines of the intersecting streets shall not be less than 150 feet.
  - 2. No two streets may intersect with any other street on the same side at a distance of less than 300 feet measured from centerline to centerline of the intersecting street. When the intersected street is an arterial, the distance between intersecting streets shall be no less than 500 feet.
- (G) Block lengths. Streets shall have block lengths between 200 and 500 feet. Exceptions are permitted however, due to topography, environmental protection, protection of existing buildings, and similar conditions.
- (H) Curb radii. Curb radii shall be designed to reduce pedestrian crossing distances along all streets requiring sidewalks. In general, curb radii should not exceed twenty (20) feet. At an angle of intersection of less than 90 degrees, a greater radius may be required.
- (I) Cul-de-sacs. Cul-de-sacs, if permitted, shall not exceed 300 feet in length from the intersection with a street that is not another cul-de-sac and that provides through access. Cul-de-sac bulb radii shall be a minimum of fifty (50) feet.



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (J) Shoulders. Shoulders, where required, shall measure at least five feet in width and shall be required on each side of street and located within the right-of-way. Shoulders shall consist of stabilized turf or other material permitted by the Public Works Director and be maintained by the adjacent property owner. Center areas of Cul-de-sac bulbs shall be curbed and landscaped.
- (K) On-street parking. On-street parking is recommended where building type and use will generate regular parking use. For streets which serve commercial and mixed use buildings, and where possible, on-street parking is required and should be marked as such. Where possible, on-street parking on at least one side of the street is recommended on streets serving single-family, two-family, townhouse, and multi-family structures with lots sixty (60) feet or less in width. Where possible, on-street parking must also be provided on one side of any street adjacent to a square, park or other open space.
- (L) Street materials. Street materials shall conform to the provisions of the Miami-Dade County Public Works Manual. Exceptions may be made for pedestrian crosswalks. Sidewalk material may vary according to the overall design and character of the development as approved by the Public Works Director.
- (M) Pedestrian street crossings. Mid-block crossings, bulb outs, raised crosswalks and similar techniques may be used to accommodate pedestrians when traffic and site conditions exist to provide circulation or access to schools, playgrounds, parks, shopping centers, transportation and other facilities.
- (N) Bike lanes. Designated bike lanes a minimum of five (5) feet in width shall be installed by all development with frontage along arterial and collector roadways; four (4) feet along residential streets.
- (O) Trees and sidewalks. Pursuant to the Town's adopted Street Tree Master Plan street trees and sidewalks are required on both sides of public streets except lanes, alleys, and the undeveloped edge of neighborhood parkways. Planting area for street trees should be a minimum of five (5) feet in width and sidewalks shall at a minimum be five (5) feet in width. Along streets serving commercial uses, sidewalks should be a minimum of seven (7) feet in width. A ten (10) foot minimum width sidewalk with tree grates or cut-outs is required along Town Center commercial streets. Generally, canopy trees shall be planted at a spacing not to exceed forty (40) feet on center. Where overhead utility lines preclude the use of canopy trees, small maturing trees may be substituted,

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

planted thirty (30) feet on center. Commercial streets shall have trees which compliment the face of the buildings and which shade the sidewalk. Residential streets shall provide for an appropriate canopy, which shades both the street and sidewalk, and serves as a visual buffer between the street and the home. All sidewalks shall be paved in brick pavers, concrete, pervious concrete or a similar material, as approved by the Public Works Director.

- (P) Planting strips. Planting strips should be located between the edge of pavement/curb and sidewalk and parallel to the street. Within commercial areas and other sidewalks with high pedestrian volumes, grated tree wells may be used in lieu of planting strips. The minimum width of all planting strips shall be five (5) feet.
- (Q) Shared Use Paths. A path that is jointly used for both bicycles and pedestrians shall be eight (8) feet in width. Wherever they are present they should be easily accessible and where possible should be on both sides of the street and meet all ADA requirements.

### **Sec. 3-134. Street Cross-Sections**

The following street cross sections are typical examples of ways in which a street can be assembled within the Town. These specifications may be varied only in accordance with the design principles detailed above and as enumerated in the Town Growth Management Plan Transportation Element.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (A) **BOULEVARD.** Boulevards are urban in character and provide multi-lane access to commercial and mixed-use buildings, generally support all transportation modes [automobile, commercial vehicles, emergency vehicles, and transit] with high levels of efficiency, and carry regional traffic. Speeds [30-35 mph] and traffic volumes on these streets are higher. Widened perimeter travel lanes and sidewalks support pedestrians and bicyclists.

Design speed; 30-35 mph

Pavement width; 24-16-24 feet

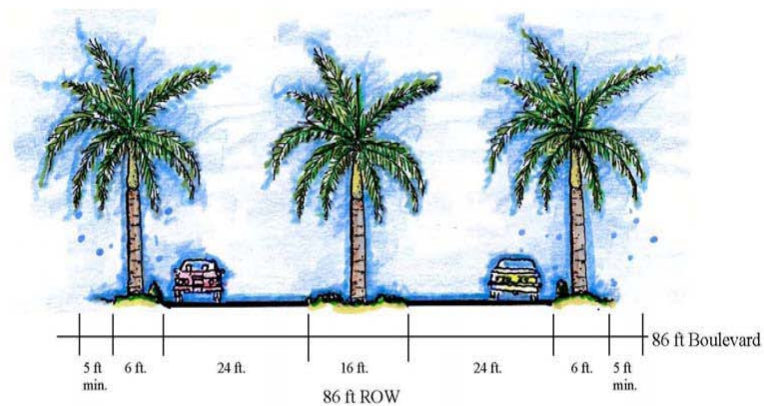
Right-of-way width; 86 feet

Curb radius; 15 feet

Drainage; Curb and gutter

On street parking; No

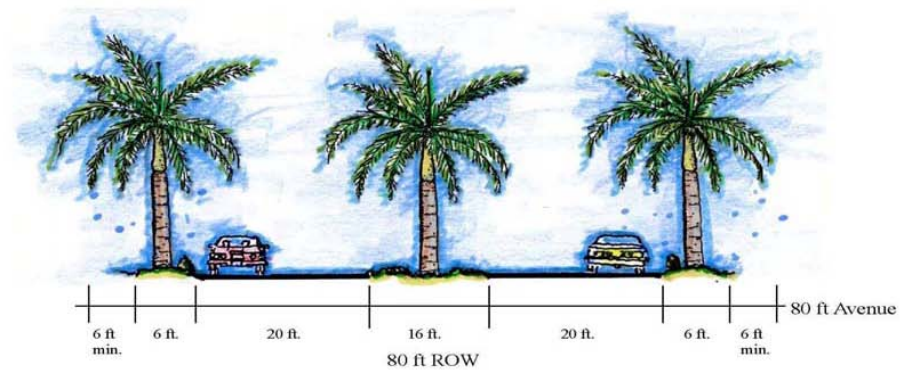
Landscaped median; 16 foot width



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (B) AVENUE. Avenues connect neighborhoods to town centers and usually extend over a mile in length. On-street parking is generally permitted. Travel lanes are physically separated by a raised, landscaped median.

Design speed; 20-30 mph  
Pavement width; 20-14-20 feet  
Right-of-way width; 80 feet  
Curb radius; 15 ft  
Drainage; Curb and gutter  
On street parking; Yes  
Landscaped median; 14 feet



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (C) **MAIN STREET.** Main streets are urban in character and provide low speed, pedestrian friendly access to neighborhoods as well as neighborhood commercial and mixed-use buildings. On-street parking along with widened travel lanes to accommodate bicycle lanes is preferred.

Design speed; 25-30 mph

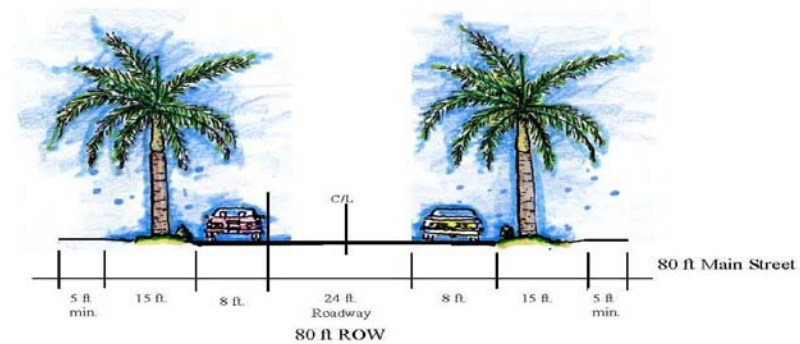
Pavement width; 12 feet

Right-of-way width; 80 feet

Curb Radius; 15 feet

Drainage; Curb and gutter

On street parking; Yes



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (D) **RESIDENTIAL MAIN STREET.** Residential Main Streets provide low-speed, pedestrian friendly access to higher density attached residential neighborhoods such as apartments and town houses. Residential Main Streets are the most urban in character of the residential street classifications.

Design speed; 20-25 mph

Pavement width; 38 feet

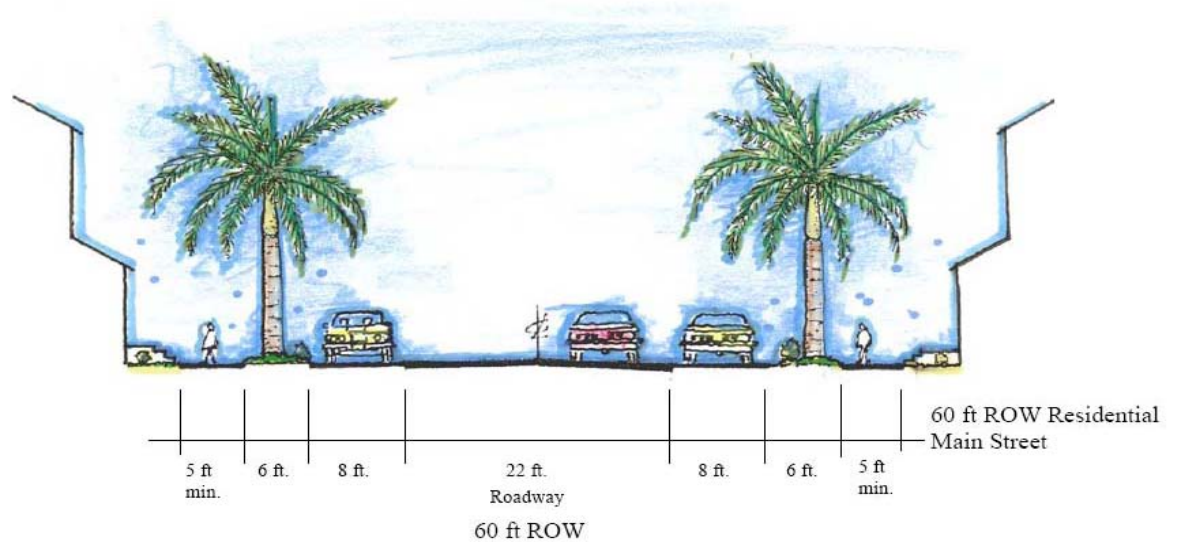
Right-of-way width; 60 feet

Curb radius; 15 feet

Drainage; curb and gutter

On street parking; Yes

Planting strip; 6 feet



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (E) **LOCAL STREET.** Local streets are pedestrian oriented and residential in character, functioning primarily to provide access to neighborhood destinations and to provide connections within neighborhoods. Traffic speeds of 15 to 20 mph are appropriate since these streets should not move significant traffic volumes. On-street parking is generally permitted on one side of the street.

Design speed; 20-25 mph

Pavement width; 28 feet

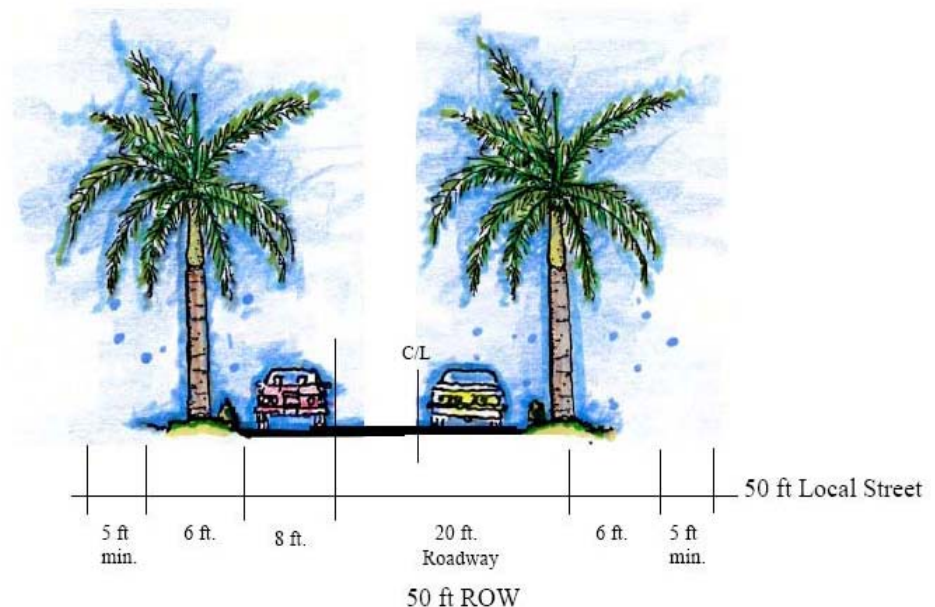
Right-of-way width; 50 feet

Curb radius; 15 feet

Drainage; valley curb

On street parking; Yes

Planting strip; 6 feet



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (F) **MINOR STREET** (This street type shall be private only). Minor streets are pedestrian oriented and residential in character, functioning primarily to provide access within neighborhoods. A traffic speed of 15 mph is appropriate since these streets are designed to accommodate low traffic volumes.

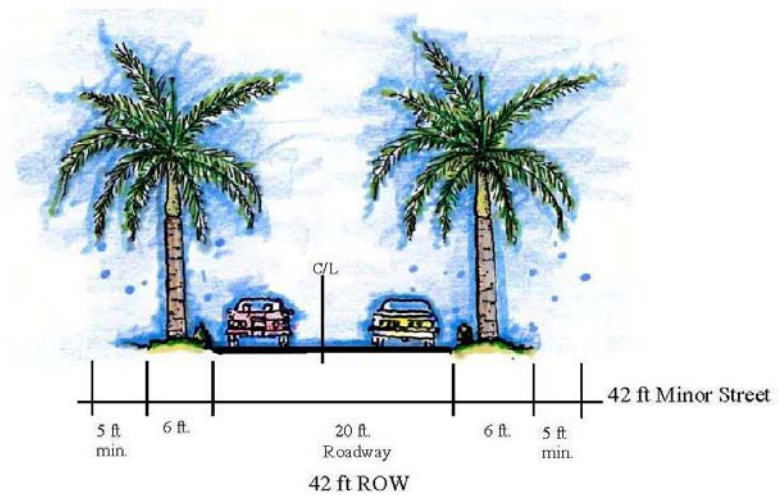
Design speed; 15 mph

Right-of-way width; 42 feet

Curb radius; 15 ft

Drainage; Valley curb / Open

On street parking; No





## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (G) LANE (This street type shall be private only). Lanes are narrow, short, low speed, low traffic, privately maintained roads typically 16 to 18 feet wide and accessing single-family residences.

Design speed; 10-15 mph

Right-of-way width; 40 feet

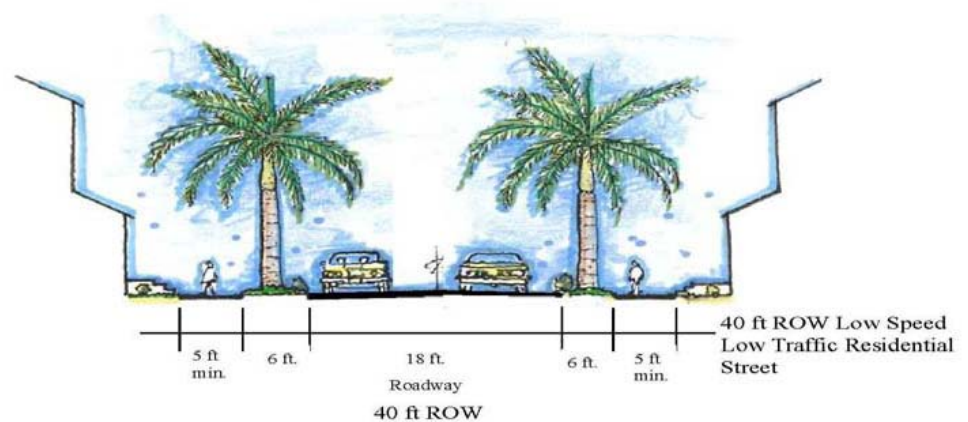
Curb radius; 10 feet

Drainage; open section

On street parking; No

Street trees; No

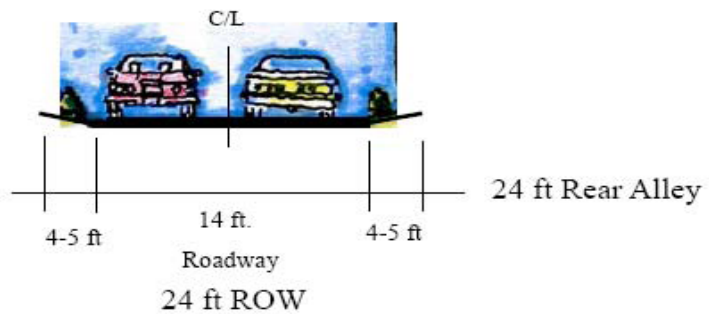
Sidewalks; No



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

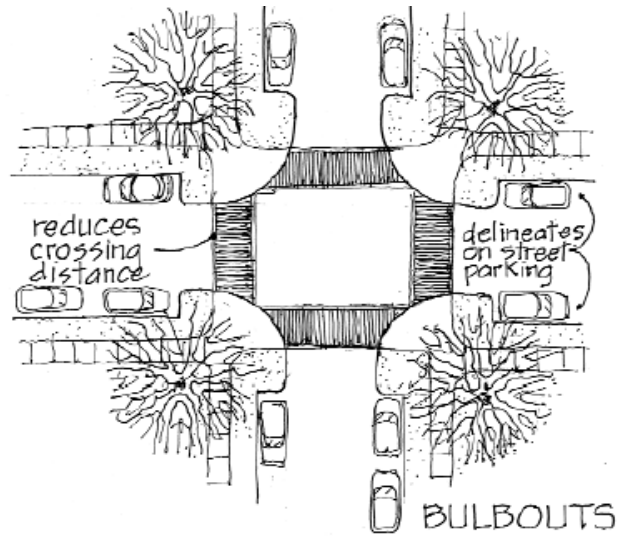
- (H) REAR ALLEY (This street type shall be private only). Alleys are privately maintained, low-speed service easements providing rear access for service, delivery, emergency access, utilities, and commercial uses.

Design speed; 10 mph  
Right-of-way width; 24 feet  
Curb radius; 5 feet  
Drainage; Curb and gutter  
On street parking; No  
Street trees; No  
Sidewalks; No

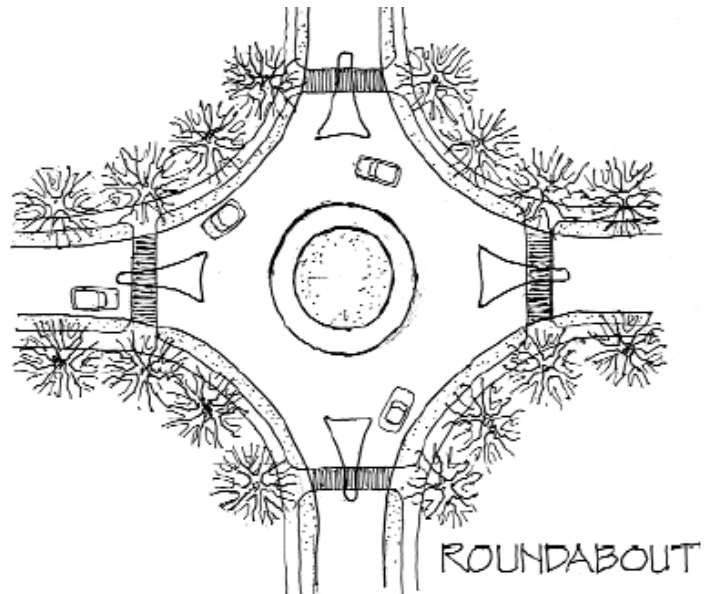


## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

### (I) BULBOUTS



### (J) ROUNDABOUTS



## **Article X**

### **OFF-STREET PARKING STANDARDS**

**Sec. 3-140. Purpose**

The purpose of this Article is to ensure the provision of adequate pedestrian circulation and off-street parking and loading areas. It is further the intent to avoid urban congestion on public streets to protect the level of service and capacity of existing streets to avoid unnecessary conflicts between pedestrian and vehicles and to promote the general health, safety, and public welfare. These regulations shall apply to all parking and loading areas, including driveways for single-family and two-family dwellings, established within the Town.

**Sec. 3-141. General Principles**

- (A) Off-street parking and loading areas should be designed to minimize breaks in the pedestrian environment along the public street and create safe and comfortable passage for pedestrians.
- (B) Off-street parking and loading is not permitted in front of the primary building façade except for single-family and two-family residential uses.
- (C) To the extent practicable, adjoining parking and loading areas serving nonresidential buildings shall be interconnected.
- (D) Off-street parking and loading areas shall be designed to facilitate adequate movement and access by sanitation, emergency, and other public service vehicles without posing a danger to pedestrians or impeding the function of the parking area.
- (E) Off-street parking and loading areas shall be designed so that parked vehicles do not encroach upon or extend onto public rights-of-way, sidewalks or strike against or damage any wall, vegetation, utility, or other structure.
- (F) Off-street parking and loading facilities shall be used solely for the parking of vehicles in operating condition by the patrons, occupants or employees of the use to which such facilities are accessory. No motor vehicle repair work, except emergency service, shall be permitted in association with off-street parking and loading facilities. The sale of vehicles shall be prohibited in a required off-street parking or loading area. The storage of commercial vehicles in an off-street parking

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

and loading facilities for more than twenty-four (24) hours shall be located in the rear of the property.

- (G) In no event shall parking or loading areas be provided in a manner that requires vehicles to back out into the public rights-of-way, or that requires vehicles to enter or exit a site in a manner which would require them to make an unlawful maneuver within the public right-of-way. This requirement does not apply to areas consisting of driveways serving single-family detached or two-family dwellings, although direct access onto arterial roadways is discouraged.
- (H) Parking and loading facilities shall be maintained in a clean, orderly and litter-free condition at the expense of the owner or lessee. Parking and loading areas shall be resealed or repaved and pavement markings periodically repainted and on-site traffic control signs replaced, as necessary, to maintain a clear identification of individual parking and loading spaces and to facilitate the safe movement of pedestrian and vehicular traffic.
- (I) Any plans for re-striping or modifying the number of parking or loading spaces shall require submittal of a parking lot plan which complies with this Article, county or state regulations.
- (J) Access to each principal building shall be provided from rights-of-way and handicapped parking spaces by means of a hard-surfaced pathway leading to at least one entrance generally used by the public. Handicapped ramps shall be designed in accordance with the ramp requirements of the Florida Building Code, this Article, county or state regulations.
- (K) Parking spaces required for the handicapped shall be counted as a parking space in determining compliance with the ratio of off-street parking requirements of this Article.
- (L) Within non-residential development, parking and loading shall be permitted only in designated parking and loading spaces.
- (M) All stormwater drainage systems shall be maintained as necessary in order to maintain storm drainage. Parking shall be prohibited on top of any drainage inlet or drainage manhole.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## **Sec. 3-142.     Parking Specifications**

- (A)     Off-street parking facilities shall be provided for all development within the Town unless otherwise specified by other regulations.
- (B)     Large surface parking lots shall be visually and functionally segmented into several smaller lots.
- (C)     For all uses except single-family and two-family dwellings, standard curb and gutter, with a minimum width of one (1) foot six (6) inches (1.6”), shall be provided along the periphery of all driveways, parking and loading areas.
- (D)     Off-street parking and loading areas and driveways shall be paved or contain a similar type material approved by the Public Works Director. Gravel or other stabilization material without a permanent wearing surface is not permitted.
- (E)     Low impact stormwater control systems shall be installed. Curb and gutter may be used where deemed necessary by the Public Works Director, in order to manage storm drainage, channelize traffic, protect buildings and landscaping areas, and separate pedestrian and vehicular areas.
- (F)     Parking spaces shall be a minimum of eighteen (18) feet long and nine (9) feet wide. Parallel parking spaces shall be a minimum of twenty-two (22) feet long and eight (8) feet wide.
- (G)     Non-residential driveways shall be a maximum of twelve (12) feet in width for one-way traffic and twenty-four (24) feet in width for two-way traffic. In no case shall a driveway width exceed twenty-four (24) feet, except as required by the Florida Department of Transportation or another applicable governmental jurisdiction.
- (H)     Non-residential off-street parking areas which are provided in excess of the requirements established in this Article shall be located on grassed or sodded surface. Alternative materials may be substituted for grass or sod with the approval of the Community Development Director.
- (I)     Nothing in this section is intended to prohibit the installation of a fully automatic parking facility in which the placement and removal of automobiles are accomplished wholly by machinery.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (J) Required parking spaces for single-family and two-family dwellings may be permitted in any setback areas or yards, except for a three (3) foot landscape area required along the side property lines when adjacent to another single-family or two-family dwelling. Vehicles parked on-site shall not encroach into or over the public right-of-way.
- (K) Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking.

<u>Angle of parking (degrees)</u>	0	30	45	60	90
<u>Aisle Width (feet)</u>					
One-Way Traffic	12	12	18	20	24
Two-Way Traffic	19	20	22	24	24

- (L) The required minimum width for a standard residential driveway shall be ten (10) feet and the maximum width is twenty (20) feet. The required minimum width for a circular driveway is ten (10) feet and the maximum width is fourteen (14) feet. Maximum impervious surface ratio provided for each residential district will be adhered to as part of the approval process.

### **Sec. 3-143. Parking Structures**

When off-street parking is located within a separate parking structure, the following conditions and restrictions shall apply.

- (A) All nonstructural portions of the exterior elevations, except for vehicular ingress and egress areas, shall, in addition to any required safety provisions, be screened by a material providing at least 75 percent opacity for the total area between deck levels.
- (B) When parking facilities are located on the roof of a structure, the maximum height of vehicles accommodated shall be visually screened from ground level. The height of the structure shall be measured to the top of the screening.
- (C) Parking structures shall have permitted uses wrapping 70 percent of the ground level along street edges. Access along other edges shall be screened with features such as grilles, trellises and vine-climbing frames.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## Sec. 3-144. Minimum Parking Ratios.

Use Parking Spaces Required
<b>RESIDENTIAL</b> Single-Family and Two-Family; 2.0 per home Townhouses; and Multi-Family; 2.0 per dwelling unit Studio Apartments and Lofts; 1.5 per dwelling unit
<b>PUBLIC ASSEMBLY</b> 0.25 per seat or 1 per 250 square feet of meeting area, whichever is greater
<b>CULTURAL, SOCIAL, RECREATION, AND ENTERTAINMENT</b> Bowling Alleys or Karate/Dance/Health Studios; 1 per 200 square feet Libraries, Art Museums and Other Cultural Facilities; 1 per 250 square feet Open Recreation; 1 per 250 square feet Swimming, Golf or Tennis Clubs; 1 per 500 square feet of floor area plus 4 per court; 1 per 100 square feet pool area; 6 per hole of golf
<b>EDUCATIONAL FACILITIES*</b> Public Schools shall be subject to parking standards as established by state law. Private Schools shall be governed by Sec. 33-124(1), Miami-Dade County Code
<b>HOSPITALS, CLINICS, AND REHABILITATION CENTERS</b> 2 per bed
<b>Homes for the Aged, Convalescent Centers</b> 1 per bed
<b>RESTAURANTS, TAKE-OUT AND NIGHTCLUBS</b> Restaurant 1 per 50 square feet of patron area Take-out and nightclubs 1 per 250 square feet of gross floor area
<b>LODGING ESTABLISHMENTS</b> 1 per room plus requirements for accessory and/or restaurant uses
<b>OFFICE, PROFESSIONAL INCLUDING MEDICAL AND DENTAL</b> 1 per 400 square feet
<b>COMMERCIAL, GROCERY, DRUG STORES, BANKS, OTHER SIMILAR USES</b> 1 per 300 square feet
<b>MEMBERSHIP WAREHOUSE, HOME IMPROVEMENT CENTERS</b> 1 per 250 square feet
<b>GAS STATIONS AND MINI MARTS</b> 1 per 200 square feet (minimum 3 spaces)
<b>PLANT NURSERY</b> 8 for first acre, or fraction thereof, and 1 for each two acres thereafter
<b>FURNITURE SHOWROOMS</b> 1 per 1,000 square feet (minimum 5 spaces)
<b>AUTOMOTIVE SALES LOT</b> 1 per 500 square feet of building area
<b>OPEN LOT COMMERCIAL USES</b> 1 per 1,000 square feet of lot area, or fraction thereof, for first 5,000 square feet and 1 per 500 square feet thereafter



# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

<p><b>WAREHOUSE AND INDUSTRIAL USES</b></p> <p>1 per 4000 square feet plus 1 per 400 square feet of office (minimum 3 spaces)</p>
<p><b>WHOLESALE SHOWROOMS</b></p> <p>1 per 800 square feet</p>
<p><b>SELF-STORAGE FACILITIES</b></p> <p>1 per 2,500 square feet</p>
<p><b>ADULT USE OR BUSINESS</b></p> <p>1 parking space per booth plus 1 parking space for each 4 fixed seats in the main auditorium for adult motion picture theaters</p> <p>1 parking space for each forty (40) square feet of customer service area, including waiting area, in conformance with the off-street parking requirements for adult dancing establishments.</p> <p>1 parking space for each 200 square feet of gross floor area for encounter studio/modeling studios, and any other regulated use not covered by the off-street parking requirements of Article.</p>

## NOTES:

- (A) A minimum three (3) foot side setback shall be required for off-street parking areas located in the residential uses above.
- (B) Parking shall only be allowed in designated spots.
- (C) Gross Floor Area is used in calculating square feet.
- (D) For uses not referenced but similar to one of the above categories the Community Development Director shall determine the number of required parking spaces.
- (E) If more than one use is within one building or development, parking for said uses shall be calculated separately.
- (F) Loading areas in front of warehouse buildings will not be counted towards parking requirements.
- (G) The maximum number of spaces for any development cannot exceed the minimum for that use by more than 10 percent. Reduction in the required parking may be considered based on the mix of uses and an approved Shared Parking Management Plan. Reductions in parking may not exceed 10 percent of the required number of spaces.

## \* Educational Facilities

Public Schools shall be subject to parking standards as established by state law. Private schools shall be governed by Sec. 33-124(l), Miami Dade County Code.

- (1) Day nurseries, kindergarten and elementary schools; Total parking spaces shall equal the combined total of personnel and transportation vehicles.
- (2) Junior high [schools]: Total parking spaces shall equal one and one-quarter (1.1/4) times the combined total of personnel and transportation vehicles.
- (3) High schools, trade schools and colleges: One (1) parking space per 200 square feet of classroom area, including laboratories, libraries and administrative areas. Housing facilities on college campuses must provide off-street parking for two (2) spaces for each three (3) sleeping rooms. Other such uses, such as restaurants, auditoriums, theaters, etc., shall provide parking as required in this section for such uses.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

In addition, in connection with the foregoing schools, one (1) parking space shall be required for each four (4) employees, excluding teachers.

In connection with the foregoing school use, parking required for church use may be credited toward parking requirements for school use, where the same ownership and on the same property.

The applicant shall submit information substantiating the personnel and vehicle figures used for computing the above parking requirements.

## **Sec. 3-145. Shared Parking**

A reduction in the total number of required parking spaces for two or more uses jointly providing off-street parking may be approved by the Community Development Director when the respective hours of need of maximum parking do not normally overlap. Reduction of parking requirements because of joint use shall be approved if the following conditions are met:

- (A) The developer submits sufficient data to demonstrate that hours of maximum demand for parking at the respective uses do not normally overlap.
- (B) The developer submits a legal agreement approved by the Town Attorney guaranteeing the joint use of the off-street parking spaces as long as the uses requiring parking are in existence or until required parking is provided elsewhere in accordance with the provisions of this Article.
- (C) The Community Development Director may approve the utilization of off-site parking areas for uses within non-residential districts. The owner of a site utilizing an off-site parking area shall provide evidence of the owner's right to use the off-site parking area either by license, deed, easement, or by long term lease. Pedestrian access shall be available within a walking distance of 500 feet, measured from the nearest point of the building lot to an entrance to the parking area. Such separated parking areas shall be usable without causing unreasonable traffic congestion, detriment to any residential neighborhood, or hazard to pedestrians.

## **Sec. 3-146. Pavement Markings**

Designated parking and loading spaces, as well as fire lanes, shall be marked on the surface of the parking space with paint or permanent marking materials and maintained in clearly visible condition. Signs or signs combined with color-coded stall lines shall be used to distinguish handicapped spaces from standard size car spaces. In parking facilities, all aisles, approach lanes, and maneuvering areas shall be clearly marked with directional arrows and lines to expedite traffic movement.

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### **Sec. 3-147. Off-Street Loading Requirements**

Every building, building group, or part thereof, which is to be occupied by multi-family, business, commercial, institutional or other uses, receives materials or merchandise and contains 10,000 square feet or more of floor area will provide the following number of berths:

Gross Floor Area	Number of Berths
0 to 10,000 sq. ft.	0
10,001 to 25,000 sq. ft.	1
25,001 to 40,000 sq. ft.	2
40,001 to 60,000 sq. ft.	3
For each additional 50,000 sq. ft.	1

- (A) Shared spaces. Loading spaces may be provided cooperatively for two or more uses, subject to the approval by the Community Development Director of appropriate legal instruments to ensure the permanent availability of off-street loading for all such uses. The overall number of loading spaces provided may be reduced by the Department in those instances where it is demonstrated that adjacent land uses can be adequately served by a shared loading facility. The Department is also authorized to require restrictions on the use and hours of operation of any uses that share loading spaces.
- (B) Size. The loading berths required in each instance shall be at least twelve (12) feet in width, thirty (30) feet in length, and fourteen (14) feet in height. The length of one or more of the loading spaces may be increased up to seventy (70) feet if full-length tractor-trailer must be accommodated. Berths may not be within the required front yard setback.

### **Sec. 3-148. Stacking Spaces**

Stacking spaces shall be a minimum of ten (10) feet in width exclusive of gutter pans and 18 feet in length. All stacking areas must be separate from other circulation aisles and parking spaces.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (A) Food Restaurants. A minimum of six (6) stacking spaces for fast food restaurants with drive-up windows. The distance shall be measured from the drive-up window.
- (B) Financial Institution Drive-up Windows. A minimum of four (4) stacking spaces per drive through lane.
- (C) Car Wash. A minimum of three (3) stacking spaces per automatic or self service car wash bay.
- (D) Day care facilities. A minimum of one (1) stacking space for each ten (10) persons accommodated.
- (E) Other Uses. For other uses not specifically provided for herein, the Community Development Director shall make a determination regarding the number of stacking spaces required.
- (F) Conflicts. Lanes shall be located and designed to minimize turning movements in relation to the driveway access to streets and intersections. The lanes shall be located and designed to minimize or avoid conflicts between vehicular traffic, parking and pedestrian areas such as sidewalks, crosswalks, or other pedestrian access ways.
- (G) Bypass Lane. Where stacking lanes are used a bypass lane shall be provided and have a minimum width of ten (10) feet. Where turns are required in the exit lane, the minimum distance from any drive-up station to the beginning point of the curve shall be thirty-four (34) feet. The minimum inside turning radius shall be twenty-five (25) feet.

## Article XI

### SUPPLEMENTAL STANDARDS

#### Sec. 3-150. Exclusion from Height Limits

No building or structure shall have a greater number of stories, nor height greater than what is permitted in the district in which the building is located. These limitations do not apply to chimneys, cooling towers, elevators, steeples, water towers, fire towers, spires, belfries, cupolas or other appurtenances usually located above the roof level and not intended for human occupancy, provided such structures do not exceed the height limits by greater than 20 percent.

1. These limitations do not apply to telecommunications, radio or television towers, cellular phone towers which may be erected in accordance with applicable ordinances of the Town. No sign, nameplate, display, or advertising device of any kind whatsoever shall be inscribed upon or attached to any chimney, tower, tank, or other structure which extends above the height limitations.
2. The Town Council may grant a waiver to these limitations where the applicant can demonstrate to the satisfaction of the Town Council that the proposed structure will not unreasonably restrict the free flow of light, sunlight, and air to neighboring properties nor otherwise be detrimental to the public health, safety and welfare.

#### Sec. 3-151. Exterior Lighting Standards/Light Pollution Reduction

Exterior lighting intensities shall be controlled to assure that light spillage and glare are not directed onto adjacent properties or streets and all direct illumination is kept within property boundaries. Exterior lighting shall be controlled to not adversely affect adjacent properties, neighboring areas, and motorists.

1. Fixtures. Exterior lighting shall be architecturally integrated with the character of the building. Full cut-off type lighting fixtures shall be used to illuminate all site areas, including pedestrian, parking, and circulation.
2. Type and Shielding Standards. Exterior lighting shall be fully-shielded to prevent glare. Any bright light shining onto adjacent property or streets which results in nuisance glare or disabling glare shall not be permitted. Light trespass beyond property boundaries or above the horizontal plane beyond the levels noted above shall be considered non-compliant. The shield or hood must mask the direct

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

horizontal surface of the light source. The light must be aimed to insure the illumination is only pointing downward onto the ground surface, without any upward escaping light permitted to contribute to sky glow.

3. Height. Exterior lighting not attached to structures shall be designed, located and mounted at heights no greater than twenty-five (25) feet above grade.
4. Illumination Levels – Non Residential. Maximum illumination at the property line shall not exceed 0.3 foot candles and 0.01 foot candles ten (10) feet beyond the property line. The intensity of illumination for exterior lighting across the site shall not exceed an average of six (6) foot candles measured at grade. Fixtures shall be placed to provide uniform distribution of light and to avoid excessive glare. Lighting fixtures in scale with pedestrian activities shall provide for uniform distribution of lighting to produce minimal shadows.
5. Flood or Spot Lamps. Flood or spot lamps shall be aimed no higher than 45 degrees from nadir when the source is visible from any off-site residential property or public roadway. Depending upon the fixture selected, these flood or spot lamps shall be required to include a glare shield to prevent glare. Any lamp installed on a residential property must be fully shielded such that the lamp itself is not directly visible from any other residential property.
6. Security Lighting. Exterior lighting for non-residential areas shall be reduced to a maximum of one (1) foot candle from dusk until dawn. This level may be reduced to one half (0.5) foot candle on non-business days.
7. Landscape and Accent Lighting. Uplighting may be utilized for landscape lighting so long as direct light emissions shall not be visible above the roofline or beyond the building edge. Accent lighting shall be directed downward onto the building or object and not toward the sky or onto adjacent properties.
8. Parking Lots, Pedestrian Areas, and Street Lights. Due to their high energy efficiency, long life and spectral characteristics, Pulse-Start Metal Halide or LED lamp sources shall be the illumination sources for outdoor lighting throughout the Town.
9. Prohibitions. The use of laser source light or any similar high intensity light for point of sale or entertainment and the operation of searchlights for advertising purposes are prohibited.

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10. Exemptions. Outdoor lighting fixtures on, in or in connection with the following facilities and land use types are exempt from the standards of this section, but voluntary compliance with the intent and provisions is encouraged.
- a. Land owned or operated by the government of the United States of America or the State of Florida, Miami-Dade County or the Town.
  - b. Lights used by police, firefighting, or medical personnel.
  - c. Residential and commercial seasonal decorations using typical unshielded low-wattage incandescent lamps shall be permitted from Thanksgiving thru January 15.
  - d. Flag Poles.
  - e. Underwater lighting used for the illumination of swimming pools, fountains and other water features.
  - f. Lighting of radio, communication and navigation towers; provided that the owner or occupant demonstrates that the Federal Aviation Administration (FAA) regulations can only be met through the use of lighting that does not comply with this Chapter.
  - g. Publically owned sports field lighting.

### **Sec. 3-152. Boat Storage**

Boats of less than thirty-one (31) feet in length, nine and a half (9.5) feet in width and thirteen (13) feet and six inches (13.6") in height, may be stored or temporarily parked in the SR and ER zoning districts only, subject to the following conditions:

- 1. The place of storage shall be to the rear of the front building line. Where the boat storage area is located between the residence and a side street property line, the boat shall be visually buffered by a six (6) foot wood privacy fence, masonry wall, trees or shrubs maintained to a height of six feet. The front building line referred to shall be that portion furthers from the street. In the event a second boat is permitted to be stored or parked on any one (1) premise, all sides of both the first and the second boats shall be visually buffered from the front and rear of the property as well as the neighboring property by a six (6) foot wood privacy fence, masonry wall, trees, or shrubs maintained to a height of six (6) feet.

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2. No more than two (2) boats may be stored or parked on any one (1) premise. A permit shall be required to be filed with the Community Development Director prior to the storage or parking of a second boat within the Town. The Director shall take into consideration lot size and configuration as well as accessory uses, buildings, or other structures located on the property when determining whether to issue a permit for a second boat. The second boat shall be no larger than seventeen (17) feet in length, not more than eight and a half (8.5) feet in width, and six (6) feet in height. The resident shall submit the boat's title or registration with the permit application and shall verify that he or she owns both boats and has erected the visual buffering as required in subsection (1) above.
3. Boats and place of storage or temporary parking shall be kept in a clean, neat and presentable condition.
4. No major repairs or overhaul work shall be made or performed on the premises.
5. The boats shall not be used for living or sleeping quarters, and shall be placed on and secured to a transporting trailer.
6. The temporary parking of a boat in front of the front building line or in front of the side street building line for no more than two (2) hours in any 24-hour period, while the boat is hitched to an operable motor vehicle with a valid permanent license tag, for the purposes of loading and unloading equipment and supplies shall be permitted, but under no circumstances shall a boat be parked in the public right-of-way, including the swale area of a right-of-way.
7. For purposes of this section, the height of a boat shall be measured from the ground to the highest point of the boat including all extruding equipment.
8. For purposes of the section the following shall be exempt from the term "boat":
  - (a) Non-motor-powered vessels;
  - (b) Non-motor-powered vessels used exclusively on private lakes and ponds;



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(c) Vessels owned by the United States Government; and

(d) Vessels used exclusively as a ship's lifeboat,

9. Upon the application of a resident, any requirement in this subsection may be waived by a majority vote of the Town Council. The application shall include a survey or site plan showing the dimensions of the property and proposed location of the boat, the type and location of the visual buffering from the front and rear of the property as well as the neighboring property, and evidence of title and registration or in the event the boat has not been acquired a description of the boat to be stored, including dimensions.
10. The Town Council may grant such a waiver upon a showing by the applicant that the waiver maintains the basic intent and purpose of the zoning and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community. In the event that a waiver is granted, such waiver shall not run with the land and shall not be transferrable to any other boat.

### **Sec. 3-153.     Parking of Trucks**

(a)     The following are hereby defined as commercial vehicles for the purpose of this section:

*Category 1.* A vehicle that is a taxicab, a limousine under twenty (20) feet in length or any passenger vehicle truck or van with a maximum height of eight (8) feet from the ground marked with a sign, letters, identification numbers or emblem advertising or associating it in any way with a commercial enterprise other than those which identify the vehicle maker or dealer. A sport utility vehicle marked with a sign, letters, identification numbers or emblem advertising or associating it in any way with a commercial enterprise, other than those which identify the vehicle maker or dealer, shall be considered as a Category 1 vehicle. A regular size commercial vehicle with racks and ladders not exceeding fifteen (15) feet associated with a commercial enterprise shall be considered as a Category 1 vehicle. For purposes of this section, a passenger vehicle bearing an emblem or lettering of a governmental entity shall also be considered as a Category 1 vehicle.

*Category 2.* A vehicle eight (8) feet or less in height that displays externally stored or mounted equipment either in a fixed or temporary manner which is visible of a commercial activity are visible including, but not limited to, food vending equipment, paint cans, lawn

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care equipment or fixtures and brackets necessary to carry such items. Trailers or utility trailers less than twenty (20) feet in length which are enclosed or of an unenclosed design shall also be included as Category 2 vehicles.

*Category 3.* A vehicle, other than recreational vehicle as defined in the definition herein, exceeding twenty (20) feet in length or more than eight (8) feet in height from the ground including, but not limited to, tow trucks, dump trucks, construction or earth moving vehicles or equipment and semi-tractors and trailers.

Non-commercial passenger trucks with mounted toolbox in the rear of the truck and without sign, letters, identification numbers or emblem advertising or associating it in any way with a commercial enterprise, and used primarily for personal use shall not be considered as a commercial vehicle.

(b) Storage or parking of certain commercial vehicles is allowed on private property in residential zones as follows:

1. In residentially zoned districts, only two (2) Category 1 vehicles may be parked at a residence.
2. In residentially zoned districts, only one (1) Category 2 vehicle may be stored or parked provided that it is kept within an enclosed garage or behind the front building line within a completely enclosed, opaque fence, screening wall or landscaping six (6) feet in height at least ten (10) feet from the rear property line when such storage is feasible, as determined by the Director. If a Category 2 vehicle is so stored or parked, then only one Category 1 vehicle may also be stored or parked at such residence.
3. For residential properties of four (4) or more units, the parking allowances provided for herein shall be applied as to each unit.
4. Storage or parking of Category 3 vehicles are prohibited in all residentially zoned districts.
5. The temporary parking of a Category 2 or 3 vehicle in front of the building line or in front of the buffer screen shall only be permitted for the purpose

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of loading or unloading of materials or persons or engaged in providing a commercial service at the premises or for the purpose of the driver to make a temporary convenience stop at the residence. However, a temporary or convenience stop shall be limited to no more than one hour in any twenty (24)-hour period.

- (c) Parking of certain commercial vehicles on the right-of-way is prohibited in residential zones as follows:

- 1. In areas zoned residential districts, it shall be unlawful for Category 2 or 3, vehicles, as herein defined, to be otherwise parked on the public right-of-way, unless actively engaged in the loading or unloading of materials or persons or engaged in providing a commercial service. Examples of providing commercial services include, but not limited to, removal of disabled vehicles from private or public property presence at a construction site, delivery of goods, repair of household appliances and cleaning of household furniture.

- (d) Violations of these provisions are punishable as follows:

- 1. Any violation of this section is punishable by a civil fine of \$500.00. Upon a repeat violation of subsection 3-153(c), in addition to civil penalties, such vehicle may be towed or immobilized until all outstanding violations and enforcement costs have been paid. After thirty-five (35) days of storage or immobilization, such vehicle may be disposed of pursuant to the provisions contained in Section 713.585, Florida Statutes. Any enforcement officer is hereby authorized to secure the assistance of the Town of Cutler Bay to effect enforcement of these provisions.

- 2. Whoever opposes, obstructs or resists an enforcement officer in the discharge of duties as provided in this section, upon conviction, shall be guilty of a misdemeanor of the second degree and shall be subject to punishment as provided by law.

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### **Sec. 3-154. Sales within Public Right-of-Way**

The sale of merchandise or goods within the right-of-way is prohibited except for fruits and/or plants grown on the owners private residential property when the right-of-way is contiguous with the owner's property.

### **Sec. 3-155. Property Maintenance**

The property maintenance requirements shall become effective upon adoption of these Land Development Regulations, however, no new enforcement proceedings shall commence under this section until 120 days after adoption. However, notices regarding any violations can be posted for informational purposes during this period. This 120-day period is to allow property owners time to make necessary improvements required under this section.

- (A) A structure shall have no more than 20 percent of its exterior roofs, walls and other elements of the structure covered with disfigured, discolored, cracked, or peeling surface materials for a period of more than thirty (30) consecutive days.
- (B) A structure shall not be maintained with broken windows, holes in exterior surfaces including screens, roofs and walls, ripped awnings, loose materials, loose elements or other obvious exterior defects for a period of more than thirty (30) consecutive days. Exterior materials shall form a weather tight surface with no holes, excessive cracks or decayed surfaces that permit air to penetrate rooms where such rooms are designed, used, permitted or intended for human occupancy or use.
- (C) An accessory structure, such as a shed, shall not have weeds, trees, vines, or other vegetation growing upon it greater than twelve (12) inches in height in an untended manner for a period of more than ten (10) consecutive days.
- (D) All site lighting, parking areas, fences, railings, driveways, curbs, wheel stops, sidewalks, gutters, storm water management areas and systems and other improvements and appurtenances shall be maintained in working order and reasonably free of defects.
- (E) The owner or tenant shall maintain all required landscape areas, trees and shrubs in a neat and healthy condition free of diseased, dead, or bare areas and free of debris and weeds.

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- (F) The owner or tenant shall maintain all landscaped areas in a manner consistent with the requirements of this code. Dead landscape shall be replaced as necessary to maintain compliance with the regulations contained herein.
- (G) The property owner shall maintain the property and the exterior portions of any structures thereupon free of accumulations of debris, junk, garbage, or trash.
- (H) Hurricane shutters may remain up only during periods of weather emergencies issued by the National Weather Service for the area. During these weather emergency events shutters may be erected but shall not remain up for more than four (4) weeks after the proclaimed event has passed, and the home is secure from damage.
- (I) Shutters may remain up in cases when the house becomes uninhabitable or heavily damaged, as determined by the Director.

### **Sec. 3-156. Temporary Use**

The following uses require a temporary use permit issued per the requirements of Article III and the standards established below.

- (A) Uses authorized.
  - a. Construction office trailers, construction equipment and/or materials storage, processing and fabrication for a development project with site plan approval.
  - b. Temporary sales offices and model homes established for the express purpose of marketing a real estate development project with the site plan approval. The offices and model homes shall be located on and limited to the property which is being marketed for sales. Attended modular trailers for the purpose of collecting, storing or distributing goods on private property. Unattended facilities are prohibited in any zoning district.
  - c. Modular trailers or portables for the purpose of temporary facilities for private educational purposes for student classrooms and administrative space, for a development project with final site plan approval. The temporary facilities shall be located on and limited to the property which is the subject of the final site plan approval. The maximum time limit for use of the temporary facilities shall be eighteen (18) months from the date

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of final site plan approval. A removal bond in the amount of \$5,000.00 for each structure, in a form approved by the Town Attorney, shall be required from the applicant prior to issuance of a permit for the temporary facilities.

- d. Temporary storage units which are a transportable unit designed and used primarily for temporary storage of building materials, household goods, and other such materials for use on a limited basis on a property. Such units shall not be considered an accessory structure.
- e. Freight cargo containers which are reusable enclosed or semi-enclosed vessel, cargo container or truck trailer shall not be considered an accessory structure.
- f. The following requirements shall apply to the placement of temporary storage units and freight cargo containers in residential zones:
  - (1) A temporary storage unit or freight cargo container shall be located on a residential lot for a maximum of fourteen (14) consecutive days, including the days of delivery and removal. An extension may be granted to the user by the Town Manager, or designee, subject to conditions, for a reasonable additional time period in an amount not to exceed twenty-eight (28) days. In no case shall the storage unit or container be located on a residential property for more than four months in a calendar year.
  - (2) The user as well as the supplier, shall be independently responsible for ensuring that the temporary storage unit or freight cargo container is maintained in good condition, free from deterioration, weathering, discoloration, graffiti, rust, ripping, tearing, holes or breaks at all times.
  - (3) No storage of solid waste, construction debris, demolition debris or any illegal or hazardous material is permitted at any time. Upon reasonable notice to the user, the Town may inspect the contents of any temporary storage unit or freight cargo container at any reasonable time to ensure that it is not being used to store materials that are not permitted.
  - (4) No temporary storage unit or freight cargo container may be used to house humans or animals of any kind.

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- (5) The date that the temporary storage unit or freight cargo container was dropped off must be clearly posted, in a weather resistant manner, on the temporary storage unit or freight cargo container.
  - (6) The Town Community Development Director may waive these guidelines that pertain to the duration that the temporary storage unit or freight cargo container may be kept on a property if the Director determines that the entity seeking the waiver by necessity needs an extension due to an acute, non self-imposed hardship.
- (B) Maximum time limit. A maximum time limit shall be established for all temporary uses based on the minimum amount of time needed to conduct the permitted activity. Temporary uses and structures related to real estate development projects shall not be maintained longer than the time necessary to complete the construction of the project and shall be removed within thirty (30) calendar days of the final certificate of occupancy.
- (C) General criteria and limitations. The temporary use shall be compatible with the surrounding land uses. A parking problem shall not be created. If off-site parking is to be utilized, permission must be in writing from the owner of the property utilized. An applicant may not receive a temporary use permit on the same property more than three times within a calendar year, unless approved by the Town Council. The temporary use must not endanger the public health or safety of the citizens or businesses of the Town.

### **Sec. 3-157. Temporary Outdoor Sale of Trees and Fireworks**

Temporary outdoor sale of trees and fireworks associated with holidays in December, New Years Day, Independence Day, and pumpkins associated with Halloween, are permitted in non-residential zoning districts. The siting and sale of fireworks and pumpkins is allowed for a maximum of thirty (30) calendar days and trees associated with holidays in December for a maximum of forty-five (45) calendar days. The permit shall not be issued or be effective for more than forty-five (45) days prior to the actual holiday. The permit shall expire and the use shall be removed by the 3<sup>rd</sup> day following the holiday. Trucks, trailers and flat beds are not permitted on the site except for short-term delivery of the products. A single recreational vehicle is permitted on-site for the duration of the use to monitor site activities and secure the property. In addition to the Director, the permit application shall be reviewed by the Building Department, all applicable County Departments to determine if any additional permits or conditions of the permit shall be required.

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- (A) The Applicant shall provide written authorization from the property owner along with evidence of adequate on-site parking which safely manages the parking needs of the temporary use in association with existing site activities. Any and all activity shall operate only between the hours of 10:00 am and 10:00 pm and shall be of a non-permanent nature.
- (B) The use is allowed one (1) twenty-four (24) square foot non-illuminated temporary sign. No application will be considered for a property or Applicant that is the subject of a pending code enforcement action or lien.

### **Sec. 3-158. Sheds**

Rear yard storage sheds are permitted as accessory structures in residential zoning districts. The maximum square footage may not exceed 15 percent of the total square footage of the rear yard and not including the side yards. Sheds are not permitted in non-residential developments and may not be used as habitable structures.

### **Sec. 3-159. Structures and Uses Limited in Yards**

No principal building or structure shall be located within any required setback or yard, within any setback or yard established by a recorded plat or recorded easement, nor in any required buffer or area used for screening.

- (A) Notwithstanding other provisions of this section, architectural features such as but not limited to cornices, eaves, bays, awnings, steps, chimneys, fireplaces, gutters, porches, etc. may project up to three (3) feet into an established or required yard, provided that where the yard is less than five feet in width such projection shall not exceed one-half the width of the yard. Stairways and balconies which are unroofed and unenclosed and balconies in side yards of multiple-family dwellings, hotels and motels, may project up to four feet, provided they do not extend more than one-half the width of the yard.
- (B) Above ground backflow preventers are expressly prohibited in the established front yards of buildings where underground backflow preventers or a location outside of the established front yard is technically feasible. Where there is no reasonable alternative, the structure shall be covered in a non-reflective material and surrounded on all sides visible from public streets and abutting properties, by an opaque landscaped screen.



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- (C) Fences, walls and hedges are permitted in required yards, subject to the provisions of this Article.
- (D) Boat lifts, davits, walks, and yard lights are permitted within the setback, provided however, that no structure shall be allowed in a recorded easement without first having obtained the approval of the easement holder.
- (E) Equipment for swimming pools, solar installations, air conditioning units and garbage receptacles with walls not exceeding four (4) feet in height above base flood elevation are permitted to encroach four (4) feet in side yards. Equipment for swimming pools, solar installations and air conditioning units are permitted to encroach four (4) feet in rear yards.

### **Sec. 3-160. Swimming Pools and Spas**

No swimming pool or spa shall be permitted within the required front yard area, or within utility, drainage or access easements. Swimming pools shall be required to have a safety barrier. Above-ground pools and spas which exceed forty-eight (48) inches in height must meet all structural setback requirements.

- (A) Safety barrier. No swimming pool final inspection and approval shall be given by the Town, unless there has been erected a safety barrier. The safety barrier shall take the form of a screened-in patio, a wooden fence, a rock wall, a concrete block wall, or other materials so as to enable the owner to blend the same with the style of architecture planned or in existence on the property. The minimum height of the safety barrier shall be not less than four (4) feet. The safety barrier shall be erected either around the swimming pool or around the premises on which the swimming pool is erected. The barrier shall enclose the area entirely, prohibiting unrestrained admittance to the enclosed area. Gates shall be of the spring lock type, so that they shall automatically return to a closed position at all times. Gates shall also be equipped with a safe lock and shall be locked when the swimming pool is not in use.
- (B) Permits. Before any work is commenced, permits shall be secured for all swimming pools and for the safety barriers. Plans shall contain all details necessary to show compliance with the terms and conditions of these regulations. No swimming pool permit shall be issued unless simultaneously therewith a permit is secured for the erection of the required safety barrier; if the premises are already enclosed, as herein before provided, a permit for the safety barrier shall not be required, if, upon inspection of the premises, the existing barrier is proven to be satisfactory.

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- (C) Construction specifications of walls and fences. For a wooden type fence, the boards, pickets, louvers, or other such members, shall be spaced, constructed, and erected, so as to make the fence non-climbable and impenetrable. Walls, whether of the rock or block type, shall be so erected to make them non-climbable.
- (D) Authority to disapprove barriers. It shall be within the discretion of the building inspector to refuse approval of any barrier which, in his opinion, does not meet the safety requirements of this regulation, i.e., that it is high enough and so constructed, to keep the children of pre-school age from getting over or through it.
- (E) Maintenance of safety barrier; duty of owner, occupant. It shall be the responsibility of the owner and/or occupant of the premises containing the swimming pool to maintain and keep in proper and safe condition at all times the safety barrier required and erected in accordance with this section.
- (F) Maintenance of pool; duty of owner, occupant. It shall be the responsibility of the owner and/or occupant of the premises containing a swimming pool to keep such pool from becoming a health hazard to the community. In the event any person owning or occupying the premises containing a swimming pool permits the safety barrier to become in an improper and unsafe condition, or permits the swimming pool to become a health hazard to the community, the Town may direct a letter by certified mail to the owner or occupant of such premises, advising such owner or occupant that the Town will have such safety barrier put in a proper and safe condition or correct the health hazard of the swimming pool within a period of ten days from receipt of such letter. The Town shall be authorized to place a lien on the property not in compliance with this section in order to recover the costs associated with enforcement of this section.
- (G) Temporary fence to enclose swimming pools while under construction. No person shall construct or cause to be constructed any swimming pools unless such swimming pool is completely enclosed by a fence with a minimum height of not less than four feet. Such fence may be of a temporary nature but must be erected either around the swimming pool or around the premises on which the swimming pool is under construction; in either event, it shall enclose the area entirely, prohibiting unrestrained admittance to the enclosed area. However, the swimming pool need not be completely enclosed during those periods when an adult person is present on the site and actual construction is in process. This section shall only affect those pools under construction within 140 feet of any residence upon which

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a certificate of occupancy has been issued. The 140 feet shall be measured from the edge of the swimming pool to the closest property line containing such residence by straight line measure.

### **Sec. 3-161. Visibility at Intersections, Drives and Driveways**

The safe sight distance triangle area shall not contain obstructions to cross-visibility at a height of two and one-half (2.5) feet or more above pavement; potential obstructions include, but are not limited to, structures, grass, ground covers, shrubs, vines, hedges, trees, rocks, signs, walls and fences. The following table represents minimum criteria for determining the required area of cross-visibility:

*Safe Sight Distance Triangle Table*

I.	Required Visibility		
Functional Classification of Through Street	Left (ft.)*	Right (ft.)*	Depth on Minor Street (ft.)**
Local	0	0	0
(50 foot or less right-of-way)	(triangle lies within public right-of-way)		
Collector	190	40	7
(60 foot – 70 foot right-of-way)			
Arterial	260	40	7
(80 foot or over right-of-way)			

\* Visibility distances measured from center line of minor street, along right-of-way line of through street.

\*\* Depth visibility on minor street measured from right-of-way line of through street, along center line of minor street (public or private street).

Table interpretations and waivers of the above requirements shall be made in writing by the Director of the Public Works Department.

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## **Sec. 3-162. Yard Sales**

General sales open to the public conducted on residential premises in any district for the purpose of disposing of personal property, including, but not limited to, all sales entitled garage, lawn, yard, attic, porch, estate, and/or patio sale; but which in no way shall be construed to include flea markets which is specifically excluded here from.

- (A) A no charge, two (2) day permit shall be obtained from the Community Development Department. The maximum number of permits which may be issued per site, per year is four (4). In addition, the Town Council may establish by resolution, two days per year in which yard sales may be allowed community-wide. No permit will be required on the days established for community-wide yard sales.
- (B) Only personal property for the purposes of this Article is that which is owned, utilized, maintained, and acquired during the course of living in and maintaining a residence by an individual or members of the household, and shall specifically exclude merchandise which was purchased for resale or obtained on consignment.
- (C) Yard sales to be located at multi-family residential buildings shall be accompanied by the written permission of the property owner, manager, and association.
- (D) It shall be unlawful for any person to conduct a yard or garage sale other than between the hours of 7:00 am and 7:00 pm. A yard or garage sale shall consist of a maximum of two (2) consecutive days and shall only take place on a Friday, Saturday, Sunday or a national holiday.
- (E) Merchandise to be sold at a yard or garage sale shall be displayed in a garage, carport, private driveway or yard. Merchandise shall not be displayed within the public right-of-way or swale area. All items shall be removed by the end of the last day of the sale. In the event that a yard or garage sale consists of two (2) days, all items kept overnight between the first and second day shall be covered in a water proof material.

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(F) Signs advertising yard sales shall be displayed only during the times of the sale and be permitted as follows:

1. One (1) sign may be located on the residential property on which the sale is occurring;
2. Up to three (3) signs advertising a yard sale are permitted to be placed on private property, with the consent of the property owner, off-site from the location of the garage sale; and
3. Signs shall not be larger than twenty-two (22) inches by twenty-eight (28) inches.
4. Yard sale signs shall not be permitted within the public right-of-way or swale. Signs advertising such sales must be removed within twelve (12) hours after the completion of the sale.

### **Sec. 3-163. Lot Frontage and Yard Requirements**

A single-family structure may be constructed on any nonconforming lot in any single-family residential district if the non-conformity is that it does not meet the minimum lot size in the residential district in which it is located, and provided the following conditions exist or are met.

- (A) No structure shall be constructed on a nonconforming lot unless it has a minimum side yard of ten percent of front yard lot width, seven and one-half feet minimum, or a minimum side yard of fifteen (15) feet where adjacent to any street.
- (B) No structure shall be constructed on a nonconforming lot unless it shall have front and rear yards conforming to the minimums required for the residential district in which the lot is located.
- (C) On lots which abut more than one street, building and lot shall generally front upon the more pedestrian oriented street, given the arrangement of existing and proposed streets and drives, and the orientation of buildings on adjoining lots. Where multiple buildings are permitted on a single platted lot, each building shall generally front upon a pedestrian oriented street, either external or internal to the development; side and rear yard designations shall be determined on the basis of building orientation. On irregularly shaped lots, the location of required front, side, and rear yards will be determined by the Director. The determination will be based on the project's ability to achieve an appropriate spacing of buildings and orientation to the street(s).

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## **Sec. 3-164. Impervious Area**

Impervious area coverage provides a control of the intensity of development of land, by controlling the amount of the land which may be covered by any type of impervious area. The impervious surface ratio is calculated by dividing the total impervious area by the gross site area.

- (A) Alternative materials. If porous paving materials [grasscrete, gravel or other like materials] are used in accordance with the Florida Building Code, then only 20 percent of the area covered with porous paving materials shall be counted as impervious area unless manufacturer information indicates a higher percentage of pervious penetration.
- (B) If pavers are used in accordance with the Florida Building Code, then only 35 percent of the area covered with pavers shall be counted as impervious surface unless manufacturer information indicates a higher percentage of pervious penetration.

## **Sec. 3-165. Stormwater Management**

In addition to meeting the requirements of this Article, the design and performance of all stormwater management systems shall comply with applicable Town, County, State of Florida and Federal regulations.

## **Sec. 3-166. Underground Utilities**

It is a requirement that all new utility distribution and service lines in the community to be placed underground.

- (A) Feeder, Distribution and Service Line Crossings. All new feeder utility distribution line and service line crossings of public rights of way and property shall be placed underground. No new public utility distribution or service line shall cross any public right of way within the Town without first obtaining a written permit from the Town Manager, or his designee, in compliance with the provisions of the Town.
- (B) Distribution systems. All distribution systems, whether wire, pipeline, coaxial, fiber-optic cable or other, shall be underground unless unfeasibility of such installation has been documented and the documentation accepted as satisfactory by the Director. In making this decision on the adequacy of the documentation and appropriateness of the request, the Director shall consider the following factors:

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1. Terrain
  2. Impacts on other customers
  3. Load characteristics
  4. Reliability
  5. Accessibility
  6. System flexibility
  7. Equipment availability
  8. Safety
  9. Timing
  10. Excessive conflicts with other utilities
- (C) On-site Service. Within any new development, all utilities installed to serve the project shall be placed underground, without expense to the Town, from the point they enter the site.

### **Sec. 3-167. Utilities**

The following basic utilities are required for all developments subject to the criteria set forth in this section.

- (A) Electricity. Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision.
- (B) Water and sewer. Every principal use and every lot within a subdivision shall have central potable water and wastewater hookups whenever required by the comprehensive plan.
- (C) Telephone. Every principal use and every lot within a subdivision shall have available to it a telephone service cable adequate to accommodate the reasonable needs of such use and every lot within such subdivision.
- (D) Illumination. All streets, driveways, sidewalks, bikeways, parking lots and other common areas and facilities in developments of three lots or more shall provide illumination, except that the Town Council may waive the requirements for streetlights if the benefits derived are not consistent with the costs thereof.
- (E) Fire hydrants. All developments served by a central water system shall include a system of fire hydrants.

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- (F) Cable TV. Every principal use and every lot within a subdivision shall have available to it a television cable service adequate to accommodate the reasonable needs of such use and every lot within such subdivision.
- (G) Utility easements. When a developer installs or causes the installation of water, sewer, storm drainage, electrical power, telephone, or cable television facilities and intends that such facilities shall be owned, operated, or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

### **Sec. 3-168. Walls, Fences and Hedges**

All walls, fences and hedges placed within required yard areas shall conform to the following regulations, except where special requirements are set forth for specific buffering or screening purpose elsewhere in this Article.

- (A) In residential districts the maximum height for walls, fences and hedges shall not exceed four (4) feet in height, measured from the final grade in front yards and six (6) feet in height in side and rear yards.
- (B) Walls and fences shall be erected with the finished side outward.
- (C) Chain link fences in residential zoning districts shall not be located beyond the front façade of the building and shall be permitted only along interior side property lines and rear property lines that are not adjacent to a right-of-way. Any chain link fence that is visible from off-site shall be concealed by landscaping.
- (D) In non-residential districts walls or fences shall be constructed of brick, stucco, wrought iron, cast iron, stone or similar combination, and shall be a minimum of five (5) feet and not exceed a maximum height of eight (8) feet.
- (E) The use of barbed wire or similar is prohibited in all applications.
- (F) All walls, fences and hedges may be placed on the property lines, but may not extend into the right-of-way or beyond property lines. No wall, fence or hedge shall be constructed or installed in such a manner as to interfere with drainage on the site. Any encroachment of a wall, fence or hedge into a utility easement shall be supported by a letter from the respective utility authorizing such encroachment, prior to obtaining the building permit.



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### **Sec. 3-169. Special Events**

(A) Application. Any property owner who desires to have a special event shall apply for a permit, including any applicable fee, with the Department on a form provided by the Town. The Director shall transmit the application to the Police Department, Building Official and Public Works for review and approval. The Director may approve, approve with conditions, or deny the application, except as otherwise provided within this section.

(B) Permit Conditions. The Director may impose conditions on an event permit as is necessary to protect the public health, safety and welfare and minimize impact to adjacent uses.

I. Conditions which may be imposed may include, but are not limited to:

- a. Yard, setback, open space and visibility triangle limitations;
- b. Temporary fences, walls or other screening;
- c. Signage;
- d. Vehicular and pedestrian ingress and egress;
- e. Property maintenance during and after the course of the activity;
- f. Control of illumination, noise, odor, vibration or other nuisances;
- g. Hours of operation; and
- h. Exterior lighting.

(C) General Criteria. The following criteria shall be used to review the application for a special event permit:

- a. The event must be compatible with the surrounding land uses;
- b. If the event is not sponsored by the property owner then permission from the property owner will be require.
- c. The event must have a plan to accommodate the expected number of vehicles in an efficient manner that will not result in a parking problem for the surrounding area. If off-site parking is to be utilized, permission must be in writing from the owner of the property utilized;
- d. The applicant has not requested a special event permit on the same property more than three times within a calendar year, unless approved by the Town Council; and

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- e. The event must not endanger the public health or safety of the citizens or businesses of the Town.

(D) Termination. At the end of the time period for which the Event Permit was issued, the Event shall be discontinued and all temporary structures and signs shall be removed within twenty-four (24) hours. Failure to comply with this requirement shall be a violation of this Code.

(E) Violations. The Director may revoke the event permit or discontinue the use if the conditions imposed on the permit are violated.

1. **Revocation of Permit.** The Director may revoke an Event Permit at any time upon the failure of the owner or applicant of the use covered by the permit to observe all requirements of the permit, this Section and other relevant provisions of law, including failure to obtain appropriate business licenses. Notice of such revocation shall be given in writing by the Director to the owner or operator of the use, by hand delivery or certified mail, setting forth the reasons for the revocation, the date and time upon which the revocation is effective and the appeals procedure. This provision shall not preclude the use of any other remedy prescribed by law with respect to violations of the provisions of this Code.
2. **Enforcement of Permit.** The Director may discontinue a use if the conditions imposed on the permit are violated, and such violation(s) creates an environment where the health, safety and welfare of the residents are compromised.

### **Sec. 3-170. Regulations of Adult Entertainment Establishments**

- (A) Authority. This Article is enacted pursuant to the Town's power to enact regulations to protect the public health, safety, and general welfare of the residents of the Town, Chapter 166 of the Florida Statutes.
- (B) Findings. Based on the evidence and testimony presented before the Town Council and on the findings incorporated in the "Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas); "Crime-Related Secondary Effects – Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008) (Texas);

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“Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney” by Richard McCleary, Ph.D. (2007)(Los Angeles, California); “Survey of Findings and Recommendations of Sexually Oriented Businesses” by Eric Damian Kelly, PhD, FAICP and Connie B. Cooper, FAICP (August 2002) (Toledo, Ohio); “A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver,” by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor’s Office, and in consultation with the City’s Attorney’s Office, Denver, Colorado (January 1998); “An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas” by Peter Malin, MAI for Office of the City Attorney (April 1997); “Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997); “Adult Use Study,” by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996); “Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses,” by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996); “Adult Entertainment Study” by Department of City Planning, City of New York (November 1994); “Adams County Nude Entertainment Study” by the Adam’s County Sheriff’s Department (1991)(Colorado); “Adult Entertainment Business Study for Manatee County, Florida,” by Manatee County Planning and Development Department (June 1987); “Effects of Adult Entertainment Businesses on Residential Neighborhoods,” by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); “NLC Summaries of “SOB Land Use” Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses,” National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005; the Town Council hereby finds as follows:

- I. Establishments exist or may exist within the Town where books, magazines, motion pictures, videos, prints, photographs, periodicals, records, novelties, and devices that depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed, and sold.

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2. Establishments exist or may exist within the Town where:
    - a. The superficial tissues of one (1) person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, accompanied by the display or exposure of specified anatomical areas;
    - b. Dancers, entertainers, performers, or other individuals, who, for forms of commercial gain, perform or are presented while displaying or exposing specified anatomical areas; or
    - c. Lap dancing occurs.
  3. The activities described in subsections one (1) and two (2) occur at establishments for the purpose of making a profit, and, as such, are subject to regulation by the Town in the interest of the health, safety, and general welfare of Town residents.
  4. The competitive commercial exploitation of such nudity and semi-nudity is adverse to the public's interest, quality of life, tone of commerce, and total community environment.
  5. The commercial exploitation of nudity and semi-nudity consists of the use of nude and semi-nude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or semi-nude entertainment in exchange for or as consideration for nude or semi-nude performance by such individuals.
- (C) Intent and Purpose--Regulated Uses. It is the intent and purpose of this section to regulate the location and separation of adult entertainment uses, referred to herein as "regulated uses," which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when they are located near properties zoned, planned or developed with incompatible uses, thereby having a deleterious effect upon the adjacent areas. Further, it is recognized that the location of even one (1) regulated use near an incompatible use causes such deleterious effects on that area. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding area. The regulations seek to prevent a concentration of regulated uses in any one (1) area. This Article has neither the purpose nor the effect of limiting or restricting access by adults to sexually oriented, nonobscene materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

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(D) Exemptions. This section shall not apply to accredited universities, colleges or other educational institutions; libraries, art galleries, museums, art exhibits and galleries open to the public; arts and cultural performance theaters and playhouses; or commercial professional photography and portrait studios which may use nude subjects for their photographs or portraits. Such uses shall not be considered regulated uses.

(E) Location. Regulated uses shall be permitted only within the Transit Corridor zoning district.

(1) No person shall cause or permit the operation of any proposed regulated use within the following minimum distances from any existing uses specified below:

- a. Places of worship, 500 feet;
- b. School, 500 feet;
- c. Public park, 500 feet;
- d. Another regulated use, 300 feet; and

For purposes of this section the term "school" shall be defined as any premises or site upon which there is a day care center, nursery school, pre-kindergarten, elementary school, middle school, high school, or library.

(2) The subsequent establishment of the uses listed in (a) (1) through (4) within these distances of an existing regulated use shall not change the status of the regulated use to that of a nonconforming use.

(3) The distance provided for in this section shall be calculated by airline measurement from property line to property line, using the closest property lines of the parcels of land involved. Where the distance is measured to a roadway, it shall be calculated from the property line of the regulated use to the edge of the right-of-way for the roadway. For purposes of this subsection, the term "parcel of land" means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit.

(4) Variances to the location standards of this section shall not be allowed.

(F) Certified Survey. For purposes of establishing the distance between regulated uses, other regulated uses and incompatible uses, as set forth above, the applicant for any regulated use

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shall furnish a certified survey from a registered surveyor indicating the distance from the regulated use, any other regulated use and any incompatible use as set forth above. In case of any dispute, a measurement scaled by the Director of the Community Development Department shall govern. For the purposes of this subsection, all measurements of distances shall be along a straight airline route from the nearest point on the property line of any property which is regulated hereunder to the nearest point on the property line of any property or use described in paragraph (E) above. If the property is one of multiple separate but attached bays designed for separate businesses, the property line of the parcel that contains the multiple-bay structure shall be considered the property line for purposes of this measurement. Therefore, no more than one regulated use may be located in any one structure, even if that structure contains multiple, separate but attached bays designed for separate businesses.

- (G) Prohibited Uses. Adult mini motion picture theaters, adult booths, and outdoor adult theaters are hereby prohibited within the Town of Cutler Bay.
- (H) Penalties. Any person violating the provisions of this article shall, upon conviction, be subject to the penalties of the Land Development Regulations, Town Code, or by any other means authorized by law.

### **Sec. 3-171. Recreational Vehicle Storage**

The place of storage shall be to the rear of the front building line. Where the R.V. storage area is located between the residence and a side street property line, the R.V. shall be visually buffered by a six-foot wood privacy fence, masonry wall, trees or shrubs maintained to a height of six (6) feet. The front building line referred to shall be that portion furthest from the street.

### **Sec. 3-172. Group Homes**

Group Homes are limited to six (6) resident clients on the premises. The operation of the facility is licensed by the State of Florida Department of Health and Rehabilitative Services and the Cutler Bay Community Development Director is notified of the licensure no later than the time of home occupancy. The structure used for the group home shall be located at least 1,000 feet from another existing, legally established group home. The 1,000 foot distance requirement shall be measured from the nearest portion of the structure of the proposed use to the nearest portion of the structure of the existing use.

### **Sec. 3-173. Water Restrictions**

- (A) Declaration of a water shortage. The declaration of a water shortage or water shortage emergency within all or any part of the Town by the South Florida Water Management

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District (SFWMD) shall invoke the provision of this Article. Upon such declaration, all water uses restrictions or other measures adopted by the SFWMD applicable to the Town, or any portion thereof, shall be subject to enforcement action pursuant to the Article. Any violation of the provisions of Chapter 40E-21, Florida Administrative Code, or any order issued pursuant thereto, shall be a violation of this Article.

- (B) Permanent landscape irrigation restrictions. This section shall be applied consistent with the requirements set forth in Section 32-8.2, Permanent Landscape Irrigation Restrictions of the Miami-Dade County Code, as amended from time to time. The provisions of the section shall apply to all users of any water resource within Miami-Dade County, whether from publicly or privately owned water utility systems, private wells, or private connections with surface water bodies. These provisions shall not apply to athletic play areas and public gardens as defined herein and users under water use permits issued pursuant to Chapter 40E-2 and 40E-20 of the Florida Administrative Code.
- (C) Enforcement. Every police officer having jurisdiction in the area governed by this section shall, in connection with all other duties imposed by law, diligently enforce the provisions of this section. The Town's Code Compliance Division shall also enforce the provisions of this section. In addition, the Town Manager may also delegate enforcement responsibility for this section to agencies and departments of the Town government, or cities in the service areas governed by this section in accordance with state and local law.
- (D) Penalties. Violation of any provisions of this section shall be subject to the following penalties:
  - 1. Phase I, II, Modified Phase II, Phase III or Phase IV water restrictions, as determined by the SFWMD:
    - a. First violation – courtesy warning
    - b. Second violation, a fine of - \$50
    - c. Third violation, a fine of - \$125
    - d. Fourth violation, a fine of - \$250
    - e. Fifth and subsequent violations, a fine not to exceed - \$400
  - 2. Each day in violation of this section shall constitute a separate offense. In the initial stages of a water shortage or water shortage emergency, law enforcement officials, may provide violators with no more than one (1) written warning. The Town, in addition to the civil sanctions contained in the section, may take any other appropriate legal action, including, but not limited to, emergency injunctive action,

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enforce the provisions of this section. The police department may adhere to Section 32-8.1 of the Miami-Dade County Code, which indicates that should the SFWMD implement a water shortage plan, and declare a water shortage, the provisions of Chapter 32 of the County Code go into effect, and all police officers may issue criminal sanctions as provided under state law and county code.

- (E) Appeals. Appeals under the Town's civil citation system of citations issued shall be to the Town's Special Master as provided for under the Town's Code.

### **Sec. 3-174. Farmers Market**

- (A) The minimum lot size for an outdoor market shall be two and one-half (2.5) acres.
- (B) An application, on a form provided by the Town, shall be filed by the property owner or authorized agent prior to an outdoor market occurring within the town. Upon the filing of a complete application, including the applicable permit fee, Town staff shall review the application for consistency with the requirements of this ordinance. After review, the Town manager or designee may approve, with conditions, or deny the application.
- (C) Each outdoor market shall have a designated market manager who is in charge of running the market and enforcing all applicable health and safety regulations. The market manager shall provide his or her address, telephone number(s), and email address to the town prior to the event occurring.
- (D) Hours of Operation, Days, and Set-Up Time.
  - 1. An outdoor market may be operated within the town between the hours of 9:00 a.m. and 3:00 p.m.
  - 2. An outdoor market on a property shall occur only on a Saturday or Sunday but not on both days.
  - 3. An outdoor market shall be set up a maximum of two (2) hours prior to the event occurring.
- (E) A site plan shall be submitted for approval by the Town Manager or designee, which depicts, at a minimum, the location of vendors, ingress and egress, parking, and setbacks. The site plan is a legally binding document that shall be strictly enforced by the Town Manager or designee to ensure that the market is operated consistent with standards outlined in this Section.



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- (F) All uncooked food, or goods shall be located on tables and under prefabricated tents. Tents shall be a maximum of ten (10) feet multiplied by ten (10) feet, unless otherwise approved by the town. The number of tents shall not exceed forty (40) tents, unless approved by the Town manager or designee.
- (G) An outdoor market, including, but not limited to, vendors, tents, tables, and chairs shall have a minimum setback from the property line as follows: (a) Front: twenty (20) feet; (b) Side: ten (10) feet if side street, twenty (20) feet if adjacent to residential; and (c) Rear: twenty (20) feet.
- (H) The minimum off-street parking requirements for an outdoor market shall be as follows: (a) 1 (one) parking space per stall for customer parking; (b) 1 (one) oversized space for truck/trailer parking per stall; and (c) 1 (one) parking space for every 250 square feet of eating or seating or other areas used for additional activities. Access to such parking shall be through the entrance area for ingress and egress to the site and shall be clearly marked with directional signs.
- (I) On-street parking shall be located as depicted on the approved site plan and prohibited on the swales of all roads, including along Old Cutler Road.
- (J) Music may be permitted if the music is not capable of being heard beyond the outdoor market's property line.
- (K) An outdoor market may include cooked food upon the applicant demonstrating approval by all applicable County and State agencies, which may include, but are not limited to, the county health and fire department as well as the Florida Department of Business and Professional Regulation. All food shall be removed from the property after the closing of the outdoor market each day.
- (L) If open food is to be handled, proper utensils (such as spoons, single-use gloves, and deli tissue) must be provided and used. Bare hand contact with ready-to-eat open food is prohibited.
- (M) Food products must be kept shielded and protected from contamination by consumers at all times during storage, preparation and service.
- (N) Pony rides may be permitted if located in a designated area, with a fence to contain the rides so that they are not going into or around the areas where food is served or

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consumed. The fenced areas should not be near the parking or driving areas and all fencing shall be removed prior to noon on the day following the event.

- (O) The following shall be prohibited at outdoor markets:
  - 1. alcoholic beverages (consumed or sold);
  - 2. bandstand or stage;
  - 3. animals or livestock, except for ponies used for pony rides;
  - 4. games, mechanical rides, or other amusement devices, and
  - 5. food trucks, provided however that vehicles from which ice cream and frozen desert products only are sold shall be permitted and shall be exempted from the requirements of offering solely local products. Such vehicles shall be permitted in areas approved by the Town Manager or designee.
- (P) The market manager shall be responsible for the clean-up of the outdoor market. The outdoor market shall be completely cleaned up within two (2) hours after the closing of the market, which includes, but is not limited to, the removal of all trash, refuse and garbage, tents, tables, and vendors. All trash, refuse and garbage removed from the site shall be placed in appropriate containers. The site occupied by the market and surrounding swales shall be kept clean and free of accumulated trash, refuse or garbage resulting from any aspect of the market operation. All discarded fresh fruits, vegetables, produce or other food or byproduct shall be sealed in plastic bags and discarded in appropriate waste containers.
- (Q) Portable toilets are required. Such required portable toilets shall have all required permits, and shall be removed from the property no later than the following day.
- (R) If the outdoor market is to be held on Town-owned or leased property, the person or entity organizing the outdoor market shall agree to enter into an indemnification and hold harmless agreement with the Town in a form acceptable to the town attorney.
- (S) Only one (1) advertising sign shall be permitted on site and limited to twenty-four (24) square feet.
- (T) The operator of the outdoor market is solely responsible for securing all appropriate permits from the appropriate permitting agencies including the Town to operate the outdoor market.

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- (U) A violation of the provisions of this Section or any condition of approval shall result in the revocation of the permit and a code enforcement violation enforced pursuant to the Town's code enforcement procedures.

### **Sec. 3-175. Alcoholic Beverages**

(A) No alcoholic beverage sales for consumption on-site or off-site shall be permitted upon premises closer than 500 feet from any religious facility or school without approval by the Town Council, with the following exceptions:

1. When served in the dining room of a restaurant serving cooked full-course meals on a daily basis;
2. When served in a cocktail or lounge bar as an accessory use in a restaurant serving cooked full-course meals on a daily basis and that the cocktail or lounge bar does not have a separate entrance than the restaurant and is no larger than 15 percent of the gross square footage of the restaurant;
3. When beer and wine is sold as a grocery item for consumption off the premises from a grocery store;

(B) The 500 foot lateral distance shall be measured and computed by following a straight line from the front door of the place of business to the nearest point of the structure of a school and/or religious facility.

(C) In reviewing an application for alcoholic beverage sales the Town Council shall consider, but not be limited to the following criteria:

1. Location of building on the site.
2. Location of entrances and exits to the licensed establishment.
3. Proposed hours of operation.
4. Other uses of business adjacent to or between the licensed establishment and the religious facility or school.
5. Vehicular and pedestrian paths between the licensed establishment and the religious facility or school.
6. That the location is not detrimental to the public health, safety and welfare.

### **Sec. 3-176. Unity of Title Requirements for Residential Development**

(A) In order to assure that proposed development are developed in substantial compliance with proffered plans approved at a public hearing, the Director may, when he deems it necessary in order

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to preserve the integrity of a development, require a property owner to file a unity of title, or other similar agreement or covenant, on a form approved for legal sufficiency by the Town Attorney.

### (B) Maintenance of common areas and facilities

1. A homeowners' association, or similar association, shall be created for the entire development as a master association which shall provide for the maintenance of all common areas, roadways, cross-easements and other amenities common to the entire parcel of land. This does not preclude individual associations for each phase in regard to maintenance of buildings and other common areas so long as said associations, or the members thereof, are made members of the master association.

2. The property owner shall execute and record among the public records a covenant running with the land for the entire property providing for the maintenance of all common areas, roadways, cross-easements and other amenities common to the entire parcel of land. This does not preclude individual associations for each phase in regard to maintenance of buildings and other common areas.

3. Each phase of development, when standing independently or in conjunction with existing developed contiguous phases, shall meet all zoning requirements. This subsection shall not be subject to a request for a variance.

4. Recordable documents establishing reciprocal rights or cross-easements for satisfaction of zoning requirements (including water and sewer lines, common parking areas, streets, driveways, entrances and exits, etc.).

(C) The recordation of separate mortgages on each phase subsequent to the recordation of a unity of title or other similar agreement or covenant shall not be deemed as a breach of the agreement, nor shall sales of individual units in the development.

(D) The provisions of this section shall not render structures approved pursuant to these provisions as nonconforming in nature. Subsequent changes more restrictive in nature in this code relating to the underlying zoning on the property shall render the uses nonconforming in nature.

### **Sec. 3-177. Outdoor Dining**

1. Permitted hours of operation are from 6:00 a.m. to 1:00 a.m.
2. Shall maintain at least a four (4) foot clear and unobstructed passageway between the café and any obstructions on the sidewalk; including but not limited to street

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trees, bike racks, lampposts, sign posts, and other existing fixtures. When located at a street corner, a ten (10) foot setback from the corner shall be maintained along both frontages.

3. No portion of an umbrella shall be less than seven (7) feet above the sidewalk or extend into or over the pedestrian right-of-way.
4. Individual tables and chairs shall be utilized to allow temporary removal and use of the right-of-way for public events, construction activity, repair, or any other purpose.
5. A sidewalk café shall not extend into the area in front of an adjoining structure without the written consent of the adjoining property owner.
6. The café area shall be completely surrounded by an architecturally compatible enclosure at least three (3) foot in height which may include plants. No enclosures shall be required if the applicant proposes to limit the café area to one row of tables and chairs abutting the wall of the establishment and no alcohol will be served.
7. The operator shall provide proof of liability insurance coverage in the amount of at least \$1,000,000 with the Town named as an additional insured, if located within the public right-of-way.
8. Outdoor seating less than 15 percent of interior seating is deemed accessory and exempt from impact fees and additional parking requirements.

### **Sec. 3-178. Amateur Radio Station Antennas**

Poles, masts and towers for supporting antenna used in the operation of amateur radio stations licensed by the Federal Communications Commission shall be excepted from the above regulations and shall be governed by the following requirements:

- (A) Location on property. All such poles, masts and towers shall be placed no closer than five (5) feet to an official right-of-way line or to property under different ownership, or closer than one (1) foot to an easement. If beam (array) type of antenna installed, no element or part of such beam type array antenna shall extend closer than five (5) feet to an official right-of-way line and/or the property under different ownership or closer than one (1) foot to an easement.
- (B) Compliance with electrical codes federal regulations. All such installations shall conform to the requirements of the National Electrical Code and the F.C.C regulations, Title 47, Part 97, governing amateur radio services. National Electrical Code installation must maintain a

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minimum of eight (8) feet clearance from power lines over 250 volts and all high primary lines, and this includes the beam elements or any part thereof.

- (C) Permits. Permits shall be required for installation of any poles, masts or towers over twenty (20) feet above the roof of any structure to which they may be attached, and for any installation over thirty-five (35) feet in height when erected on natural ground. Where permits are required, they shall be obtained from the Department; and applications for permits shall be accompanied by plans and specifications, three (3) copies, showing all dimensions, size and kind of members, footings and guy wires, if any; locations, depth and type of guy anchors and footings, if any, and showing the type and weight of antenna, apparatus or structure to be attached to or supported by the structure.
- (D) Poles, type. Poles shall be of the approved creosoted type or treated or painted with a chemical preservative and an outer coat of oil base paint before installation (Color to match surrounding development).
- (E) Holes. Recommended sizes and depths of holes for various type poles subject to good engineering standards:

### *Poles*

<i>Height</i>	<i>Hole Depth</i>	<i>Hole Depth</i>
<i>Above</i>	<i>in Firm</i>	<i>in Rock</i>
<i>Ground</i>	<i>Ground</i>	<i>Ground</i>
16 ft.	3 ½ ft.	3 ft.
20 ft.	4 ft.	3 ft.
25 ft.	5 ft.	3 ft.
35 ft.	6 ft.	4 ft.
50 ft.	7 ft.	4 ½ ft.

If the earth is damp or soggy, the depth of hole is to be increased by one (1) foot. If the pole is guyed in accordance with American Standards Association standards, the depth of hole as listed in Code can be decreased by one (1) foot. If carrying a beam, poles must be properly guyed, as is the case where the pulling effect of wire antenna or weight of other installations will require guying.

- (F) Masts. Masts constructed of wood (2" x 2" or 4" x 4" for either the "A" frame type construction or straight masts) shall be properly chemically treated, painted with an outside coat of oil base paint and be properly guyed both at the top and middle in at least three (3) different directions, approximately 120 degrees apart, or otherwise suitably guyed. Masts to

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support a beam, whether of wood or metal pipe, must comply with all the regulations applicable in regard to location, guying, etc., and the maximum allowable weight of antenna, rotator and components shall not exceed 150 pounds.

- (G) Towers. Towers of galvanized steel, iron or aluminum, whether of the rigid nondemountable type or the rigid, demountable type with the crank-up, crank-down and either the hinged base or swivel crank-over features shall carry no more weight on the top than specified by the manufacturers' specifications.
- (H) Waiver of objection for certain structures; servicing; removal. All poles, masts or towers, and other structures used for antennas under this section, which exceed thirty-five (35) feet in height above grade elevation, or which exceed twenty (20) feet in height above the roof of any structure shall be subject to the following requirements:

If the top of such poles, masts or towers are higher above their foundation of the structure on which they are erected, than 90 percent of the horizontal distance from its base or projected base to the nearest point on adjacent property under different ownership or to the nearest edge of an official right-of-way, then no permit shall be issued for such installation unless a waiver is obtained from each and every owner of adjacent property that the structure could fall upon.

In calculating the height of demountable type towers, the top of the lower rigid section shall be considered the top for the purpose of this subsection.

Beam array antenna shall be so mounted so as to provide easy servicing and easy access for removal at approach of hurricanes, or provide for the lowering of each beam.

To the extent of any conflict the provisions of Sec. 166-0435 Florida Statutes included therein should apply.

### **Sec. 3-178.1. Junkyards; Repair of Automobiles in Residential Districts.**

- (A) No junkyard shall be permitted in a residential district. No junkyard shall be established or enlarged without a permit from the Department, and the permit shall not be issued unless the same has been approved by the appropriate zoning board, after public hearing.
- (I) Junkyards shall be surrounded by a solid wall eight (8) feet high, and this wall shall be a C.B.S construction and painted and maintained in order to present a good appearance.

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In lieu of C.B.S. wall, an eight-foot- high cyclone-wire type fence with top rail may be substituted, such wire fence to be interwoven with wooden, metal or plastic strips to create a solid screening site barrier. If wire fencing is used, a two-foot concrete (on footing) or heavy sheet metal curb (imbedded at least two (2) feet in the ground) shall be placed immediately adjacent to and inside such fence to prevent runoff of oil, transmission fluid and other contaminants onto adjacent properties or into adjacent waterways that may result from junking operations.

Whether a C.B.S. or interwoven cyclone-wire fence is used, all gates shall be of the cyclone-wire type, interwoven with wooden, metal or plastic slats in order to screen the interior of the yard when the gates are closed.

(2) In addition, whether a fence or wall encloses the junkyard, an appropriate hedge made up of native tree or plant species such as southern red cedar or other species approved by the Department shall be planted outside the walls or fences, such tree or plant species to be not less than four (4) feet in height at time of planting, five (5) feet on the center and two and one-half (2 ½) feet from the wall or hedge. In no event shall the junk or scrap be piled higher than the wall or fence unless the hedge around the entire site grows above the wall or fence and forms a solid screen; in that event the scrap or junk may be piled up to the height of the hedge.

(3) All existing junk and scrap yards shall be made to comply to all of the foregoing requirements within a period of two (2) years from the effective date of the ordinance from which this section derives and if not so made to comply, they shall be removed and the use discontinued.

(B) In residential zoning districts, a property owner or tenant on improved property having a principal building may repair or otherwise put into operative condition an automobile on his property, only if all of the following requirements are met:

(1) The property owner or tenant owns the automobile being repaired;

(2) The repair activity takes places only during daylight hours;

(3) While under repair the automobile shall not be parked in front of the principal building on the property unless the side yard and/or the rear yard are not accessible; and

(4) The work undertaken at the premises to repair or otherwise put the automobile into operative condition shall be limited to minor repairs only. The term "minor repair"



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includes any work which is completed with seventy-two (72) hours including, but not limited to, change of tires, replacement of batteries, change of oil, replacement of brakes and engine tune-up. Any other work, including work wherein the vehicle engine or transmission is removed or lifted from the vehicle for repair or replacement, or the vehicle is placed on blocks with the tires removed, is prohibited.

### **Sec. 33-178.2 Donation Collection Bins Prohibited; Exceptions.**

- (A) Donation collection bins prohibited; exceptions. It shall be unlawful to deposit, store, keep or maintain or to permit to be deposited, stored, kept or maintained a donation collection bin in or on any lot, parcel or tract of land or body of water in any zoning district. A donation collection bin is hereby defined as a receptacle designed with a door, slot or other opening and which is intended to accept and store donated items; provided however, the definition of donation collection bins shall not include non-motorized vehicles which comply with the following criteria:
- (1) The non-motorized vehicles must be operated by an organization which has been incorporated as a not-for-profit organization under the laws of the State of Florida for a charitable purpose and which has been declared exempt from the payment of federal income taxes by the United States Internal Revenue Services;
  - (2) Personnel directly employed by or volunteers for the not-for-profit organization must be present at the non-motorized vehicles at least five days a week (except holidays) to accept donations;
  - (3) The monetary proceeds resulting from the sale of donations collected at a non-motorized vehicle must be used in accordance with the organization's charitable purpose to benefit persons within the boundaries of Miami-Dade County or outside of Miami-Dade County to provide emergency relief for victims of natural, man-made or economic disasters;
  - (4) The operation of the non-motorized vehicles, the collection and distribution of donations and proceeds thereof must be conducted by said not-for-profit organization and not by a licensee, subcontractor or agent of the not-for-profit organizations; and
  - (5) The non-motorized vehicles shall be located on sites designated by the Town; provided further that said non-motorized vehicles shall operate in a safe manner, be neat in appearance, well maintained, free of graffiti, fully painted and shall be buffered from adjacent properties by on-site landscaping, walls or similar screening; and

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(6) For each non-motorized vehicle said not-for-profit organization shall submit a declaration of use in a form meeting with the approval of the Director in connection with the issuance of an annually renewable certificate of use and occupancy. Said declaration of use shall specify compliance with the foregoing conditions.

Non-motorized vehicles which comply with the foregoing criteria are not required to be shown on site plans which are required by the Code to be submitted for approval at public hearing or by administrative site plan review.

- (B) Designation of enforcement officer. The Director shall designate an enforcement officer who shall be responsible for the removal of donation collection boxes.
- (C) Notification. Whenever the enforcement officer ascertains that a donation collection bin is present on any property within the Town of Cutler Bay, the officer shall cause a notice to be placed on such bin in substantially the following form:

### Notice

This donation collection bin is unlawfully upon property known as (setting forth brief description of location) and must be removed within seventy-two (72) hours from the time of this notice. Failure to remove the bin shall result in the removal and destruction of the bin by order of the Town of Cutler Bay.

Dated this: (setting forth the date, time of posting of the notice)

Signed: (setting forth name, with the address and telephone

Number of the enforcement officer). Such notice shall be not

less than eight (8) inches by ten (10) inches and shall be

sufficiently weatherproof to withstand normal exposure to the elements.

### **Sec. 33-178.3 Mobile Food Services Operations Special Event.**

A Mobile Food Service Operation(s) is only allowed as part of a permitted special event. A special event consisting of a Mobile Food Service Operation(s) shall be permitted without a public hearing provided:

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- (A) The Mobile Food Service Special Event (MOFSE) shall be limited to no more than two (2) per month and shall not occur at the same location less than fourteen (14) days apart.
- (B) The MOFSE shall be permitted to operate in all nonresidential zoning districts. No MOFSE shall operate within two (2) blocks of a school on weekdays from 7:30 a.m. to 5:00 p.m.
- (C) The MOFSE shall be operated no later than 10:00 p.m. on weekdays, midnight on weekends. Up to four days per calendar year, a MOFSE may operate until midnight on a weekday, provided that it occurs on a holiday, and provided that these four (4) dates are included as part of the schedule of events provided in the application and are indicated on the certificate of use.
- (D) The MOFSE shall not be permitted to sell alcoholic beverages. Sale and consumption of wine and beer can be allowed as permitted by law.
- (E) In the event there are temporary structures or stages, the MOFSE shall obtain a building permit from the Town. Temporary structures or stages shall meet the requirements set forth in the Florida Building Code, as amended from time to time.
- (F) A Certificate of Use shall be obtained for each MOFSE site on an annual basis.
- (G) A Certificate of Use package for the MOFSE shall be obtained, completed and submitted to the Town's Department of Community Development. The complete package shall include all of the following information:
  - (1) Notarized letter from property owner of record authorizing the MOFSE described in the application package and designating a MOFSE Coordinator and an alternate.
  - (2) Written waivers of objection from 80 percent of the owners or residents of residentially zoned properties within 1,000 feet. The Director shall not count unoccupied properties in calculating the 80 percent.
  - (3) Schedule of events.
  - (4) Notification and sign-off from the Town Police Department.
  - (5) A traffic safety and security plan.

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- (6) Narrative from applicant describing the hours of operations, estimated public attendance, and description of any amenities provided.
  - (7) Copies of State licenses of each of the individual Mobile Food Service Operations participating.
  - (8) The maximum number of individual Mobile Food Service Operations which may be present at the MOFSE. This maximum number shall be indicated on the certificate of use.
  - (9) Site Plan or survey indicating the following, which shall consider the MOFSE's estimated public attendees and maximum number of individual Mobile Food Service Operations.
    - (a) General placement of the individual Mobile Food Service Operations.
    - (b) Location of refuse facilities, if not hauled away by the individual Mobile Food Service Operations.
    - (c) Location of sanitation facilities.
    - (d) Location of on-site and off-site parking areas.
    - (e) Lighting fixtures, if applicable.
    - (f) Rights-of-way, internal circulation and ingress and egress.
    - (g) If it is found that the MOFSE is operating in a manner inconsistent with the representations made in the application package provided to the Department the Director shall have the authority to revoke the Certificate of Use immediately.
  - (10) A certificate of use for a MOSFE is nontransferable and nonrefundable. The Certificate of Use shall apply for the operation of the event at the designated approved location, for the type of food service, and for the permit holder for which it was granted.
- (H) MOFSE Coordinator. Each MOFSE shall have a coordinator. The designated MOFSE coordinator shall:
- (I) Assist in the placement/positioning of individual Mobile Food Service Operations in a MOFSE;

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- (2) Maintain for inspection, at the MOFSE site, all pertinent documentation provided by the individual Mobile Food Service Operations such as proof of licensing and insurance; and
  - (3) Assure compliance with hours, clean-up and other Certificate of Use requirements.
- (l) Operational Requirements. The following requirements shall apply during the operation of a MOFSE in the Town.
  - (1) No food shall be stored, displayed, or served from any place other than the approved vehicle or trailer. The use of tables, benches, and other such devices to display or serve items is prohibited.
  - (2) Food condiments shall be protected from contamination. Food condiments provided for customer self-service shall be prepackaged or shall be from approved dispensing devices.
  - (3) Utensils and equipment shall be handled and stored so as to be protected from contamination. Single-service utensils shall be obtained from sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once.
  - (4) Vehicles shall comply with all applicable health and sanitary laws of the county and state.
  - (5) The MOFSE license holder shall be responsible for keeping the operational area clean. The refuse receptacle shall be adjacent to, but not an integral part of, the Mobile Food Service vehicle.
  - (6) The MOFSE license holder shall, by written agreement with the business establishment hosting the special event, arrange for the availability of sufficient restrooms and hand washing sinks that may be used by the public and employees working in the Mobile Food Service Operation when the vehicle is parked in the same place for more than two hours. The restrooms and hand washing sinks must be within 200 feet of the MOFSE. A copy of this agreement shall be kept in the vehicles at all times and shall be made available for inspection upon request.

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- (J) License – Posting. Every license shall be posted in a conspicuous place in a part of the vehicle to which the public has access by sight.
- (K) Enforcement. Violation of this Ordinance shall result in a daily fine, per violation, as provided in the Town Code.

## **ARTICLE XII**

### **SUBDIVISION OF LAND**

#### **Sec. 3-180. Purpose**

These regulations are adopted to protect and provide for the public health, safety, comfort, and welfare of the Town; to guide future growth and the harmonious, orderly, and coordinated development of land in accordance with the Town's Growth Management Plan; to establish standards of design and procedures for subdivisions and replats to further the orderly layout and use of land; to ensure that public facilities are properly planned and made available and will have sufficient capacity to serve the proposed subdivision; to preserve the natural beauty and ecology of the Town; to ensure appropriate development with regard to these natural features; and to provide for open spaces in subdivisions for recreational and educational purposes.

#### **Sec. 3-181. Applicability**

All subdivisions of parcels of land into one (1) or more parcels, lots or tracts shall adhere to the requirements in this Article. The contents of this Article are in addition to any applicable requirements set forth in Chapter 28 of the Miami-Dade County Code of Ordinances and Chapter 177, Florida Statutes.

#### **Sec. 3-182. Waiver of plat; exemptions**

Whenever property is subdivided, a plat must be recorded, with the exception of the following.

(A) Public dedications. A plat will not be required where the subdivision:

1. Consists only of the dedication of a road, highway, street, alley, or easement.
2. Is found by the Town Council that in these circumstances it is not necessary that a plat be recorded. In lieu of the recording of a plat, the dedication may be by deed, and may require conditions as deemed appropriate under the particular circumstances; such as improvements of sidewalks, streets, or drainage facilities or the acceptance of the dedication by the Town Council. The posting of a bond or irrevocable letter of credit may also be required.

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- (B) Number of parcels. A plat will not be required where the land to be subdivided is to be divided into no more than six (6) parcels and because of the isolation or remoteness of the land concerned in relation to other platted or improved lands or improvements and dedications already exist on the land and are substantially in accordance with the requirements of this Article and Chapter 28 of the Miami-Dade County Code.
- (C) Replat of unusual tracts. Plat recordation shall not be required in cases where previously subdivided tracts are to be replated, if such tracts are of such unusual size or shape or are surrounded by development or unusual conditions to justify, in the opinion of the Community Development Department, the waiver of plat recordation requirements. In lieu of platting, the Department may require any dedications, reservations, or improvements required in connection with platting under this Chapter, including, but not limited to, the posting of a performance and maintenance bond, or an irrevocable letter of credit as may be necessary to carry out the intent and purpose of these subdivision regulations.

### **Sec. 3-183. Waiver of Plat Procedure**

- (A) Waiver of plat surveys. A waiver of plat application shall be required to be submitted by property owner(s) in order to permit a determination that the property qualifies under the platting and recordation exemption provisions of Sec. 3-182. The waiver of plat application shall be signed by the owner, notarized and submitted to the Town.
- (B) Preparation of waiver of plat surveys. The waiver of plat boundary and topographic survey shall be prepared by a licensed professional surveyor and mapper registered to practice in the State of Florida and shall bear the seal of the surveyor who prepared the survey.
- (C) Information to be included. The waiver of plat survey shall include the following information unless waived by the Town:
  - 1. Legal description of parent tract;
  - 2. Legal description of each parcel to be created;
  - 3. Location of property lines, existing easements, buildings, watercourses and other essential features;



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4. Location of any sewer and water mains and any utilities, culverts and drains on the property to be subdivided;
  5. Location, names and widths of existing and proposed streets, easements, building lines, alleys, parks, any other public ways, other public open spaces, and similar facts regarding property immediately adjacent;
  6. Date of field survey, north arrow and graphic scale;
  7. Proposed lot lines with dimensions;
  8. Existing ground elevations of subject property and all other lands within fifty (50) feet of the property;
  9. Existing easements and restrictions of the underlying plat; and
  10. Location of all buildings, slabs, fences, swimming pools and other permanent structures on both the subject and adjacent properties that would be nonconforming with the creation of the new proposed parcels.
- (D) Fees. The property owner shall pay all required fees at the time that the waiver of plat survey is submitted.
- (E) Opinion of Title. Current opinion of title from any attorney authorized to practice law in the State of Florida.

### **Sec. 3-184. Outline of Platting Procedure**

The sub-divider will gather information and data on existing conditions; study site suitability and development opportunities; and discuss financing, planning and marketing with those interested. The sub-divider will develop a preliminary plan in sketch form, which will be submitted to staff for review by a licensed professional surveyor and mapper and for advice and assistance. With the advice and assistance of a licensed professional surveyor and mapper, appropriate Town staff will review the sketch plan and programs as they relate to the total community, as well as design standards, improvement requirements and other related areas.

- (A) General Information. The owner, agent or person having control of any land within the corporate limits shall submit the information required in this Article to staff for recommendation.
1. An outline drawing and description of existing conditions of the site is required. This shall include all deed restrictions, covenants, land characteristics, availability of utilities, number of lots, typical lot dimensions, business areas, playground and park areas and other public

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areas, any proposed protective covenants and proposed streets and utilities and existing community facilities which serve or influence the proposed subdivision. Such information shall also include the development name and location, relationship to main traffic arteries, public transportation lines, shopping centers, schools, parks and playgrounds and other community facilities, such as, hospitals and houses of worship, if applicable, title, scale, north arrow and date.

2. On a topographic survey, the applicant shall show in simple sketch form the proposed layout of streets, lots and other features in relation to existing conditions, which shall include the location of all streets connecting to the proposed subdivision.
3. The information shall be submitted to and reviewed by Town staff at least fifteen (15) calendar days prior to the date of the meeting at which tentative plat or waiver of plat approval shall be considered. All submissions shall be in five (5) copies.

### **Sec. 3-185. Procedure for Tentative Plat**

The sub-divider will submit a tentative plat (also referred to as a preliminary plat) of the proposed subdivision to the Department. The tentative plat submission shall include all data required pursuant to Chapter 177, Florida Statutes; Chapter 28 of the Miami-Dade County Code; and this Article. Included in the submission will be the request of the sub-divider for approval of the tentative plat including, but not limited to, information addressing the relationship of the plat to the total community, as well as design standards and improvement requirements. The tentative plat will be reviewed by Town staff. Five (5) copies of the submission shall be provided to the Department for review and recommendation at least fifteen days prior to the Town staff review meeting at which tentative plat approval will be considered.

- (A) Town staff shall review formally the tentative plat submission to determine its conformity to the requirements set forth in this Article. Staff shall approve, subject to any conditions as may be needed, or deny the application, specifying which parts of the submission do not comply with this Article or other applicable laws.
- (B) Town staff may make such adjustments in the tentative plat as necessary to make such plat conform to all Town ordinances, regulations and requirements and will

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approve or deny the tentative plat or refer it back to the sub-divider with necessary requirements for changes noted.

### **Sec. 3-186. Public Improvements and Maintenance, Withholding from Subdivisions not Approved or Accepted**

The Town shall withhold all public improvements of whatever nature, including the maintenance of streets from all subdivisions which have not been approved, and from all areas dedicated to the public which have not been accepted in the manner set forth in this Article.

### **Sec. 3-187. Building Permits, Issuance**

Prohibition against issuance of building permits prior to plat approval. No building permits shall be issued for any structure on a lot in a subdivision on which a plat has not been approved and recorded in the manner set forth in this Article, unless the recording of a plat is not required or is an exception as set forth below:

- (A) Exceptions. Building permits for the following structures may be issued prior to the final plat:
1. Construction trailer or trailer used as a sales office subject to the requirements set forth in Section 3-196.
  2. Model and dry model homes subject to the requirements set forth in Section 3-196.
  3. Entrance features, perimeter walls and lift stations subject to the following conditions and requirements:
    - a. The tentative or waiver of plat has been approved by Town staff and is current.
    - b. The owner of the property shall provide a hold harmless agreement to the Town in a form to be reviewed and approved by the Town Attorney.
  4. Commercial, retail and industrial buildings subject to the following conditions and requirements:
    - a. The tentative or waiver of plat has been approved by Town staff and is current.
    - b. Only one (1) building permit may be issued on site, and only one (1) such permit may be issued within a subdivision.

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- c. At the time of the request for such permit, there must be an active set of building plans pertaining to the site, with an active process number under the Town's permitting system. The plans must have been reviewed and approved by the Department and all applicable county agencies. The review of the building plans shall include, but not be limited to, a review based upon the electrical, energy, mechanical, planning, and plumbing disciplines.
  - d. A letter, signed by the property owner, shall be submitted to the Department, requesting the permit prior to final plat recording. The letter shall state the proposed lot and block or tract for such permit, and the owner's acknowledgement and agreement that no certificate of occupancy will be sought or allowed until after the final plat is recorded. The letter shall be accompanied by a hold harmless agreement in a form to be reviewed and approved by the Town Attorney.
  - e. No certificate of occupancy for the subject structure shall be issued until the final plat is recorded.
  - f. The issuance of the building permit shall not modify or affect the adequate public facilities capacity of the underlying tentative plat in any way.
5. Permanent buildings to be used as single family or townhouse production homes subject to the following conditions and requirements:
- a. The tentative or waiver of plat has been approved by the Town staff and is current.
  - b. Paving and drainage plans have been approved.
  - c. All applicable Miami-Dade County requirements are complied with.
  - d. The proposed final plat for the subdivision in which the production homes are located has been listed on an agenda for approval by the Town Council.
  - e. A letter, signed by the property owner, shall be submitted to the Department, requesting approval of production homes prior to final plat recording. The letter shall state that the owner understands and agrees that the production home shall not be occupied until the final plat is recorded in the public records and that the penalty for violation of this occupancy prohibition shall

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be the demolition of the production home. Such letter shall be accompanied by a hold harmless agreement in a form to be reviewed and approved by the Town Attorney.

- f. No certificate of completion shall be issued for any production home until after the final plat is recorded except that a temporary certificate of completion may be issued by the Department.

### **Sec. 3-188. Utilities**

Utilities on and adjacent to the tract; location, size and invert elevation of sanitary, storm and combined sewers; location and size of water mains, fire hydrants, electric and telephone poles and street lights, cable TV lines, buried telephone lines, gas mains, etc., shall be included in the preliminary plat. If water mains and sewers are not on or adjacent to the tract, indicate the direction and distance to and size of nearest such lines, showing invert elevations of sewers.

### **Sec. 3-189. Ground Elevations on Tract**

Ground elevations shall be included in the preliminary plat and shall be based on a datum plane approved by the Town. For land that slopes less than two (2) percent, show spot elevations at all breaks in grade, along all drainage channels or swales and at selected points not more than 200 feet apart in all directions. For land that slopes more than 2 percent show contours with an interval of not more than five (5) feet if ground slope is regular and such information is sufficient for planning purposes, or show contours with an interval of not more than two (2) feet, if necessary because of irregular land or need for more than detailed data for preparation of plans and construction drawings.

### **Sec. 3-190. Conditions on Tract or Adjacent Land**

- (A) Subsurface conditions on tract. If required by Town staff, location and results of tests made to ascertain subsurface soil, rock and groundwater conditions; depth to groundwater, location and results of soil percolation tests, if individual sewage disposal systems are proposed shall be included in the plat.
- (B) Other conditions on tract. Watercourses, marshes, rock outcropping, wooded areas, isolated preservable trees, six (6) inches or more in diameter, houses and all other structures and other significant features shall be included in the plat.

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- (C) Other conditions on adjacent land. Approximate gradient and direction of ground slope, including any embankments or retaining walls, canals, character and location of buildings, railroads, power lines, towers and other nearby nonresidential uses or adverse influences, owners of adjacent unplatted land shall be included in the plan. For adjacent platted land, refer to subdivision plat by name, recordation date and number, and show approximate build-up, typical lot size and dwelling type.

### **Sec. 3-191. Miscellaneous Requirements**

The following shall be included in the tentative plat submission:

- (A) Photographs. Including camera locations, directions of view and key numbers.
- (B) Zoning. On and adjacent to the tract.
- (C) Proposed public improvements. Highways or other major improvements planned by public authorities for future construction on or near the tract.
- (D) Key plan. Showing location of the tract.
- (E) Title and certificates. Present tract designation, according to official records in the office of the appropriate recorder; title under which proposed subdivision is to be recorded, with names and addresses of owners, business name and address and telephone number; notation stating acreage, density of units per acre, scale, north arrow, datum, benchmarks, certifications of registered civil engineer or surveyor and date of survey.

### **Sec. 3-192. Scale; Proposals for Improvements, etc.**

The tentative or waiver of plat shall be drawn to a scale sufficient in size to show all necessary detail. The plat shall show all existing conditions as required by this Article and shall show all proposals, including the following:

- (A) Streets. Names, rights-of-way and paved roadway widths, approximate grades and gradients, and similar data for alleys;
- (B) Other rights-of-way or easements. Location, width and purpose;
- (C) Location of utilities. If not shown on other exhibits;
- (D) Lot lines. Numbers and block numbers;

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- (E) Sites. If any reserved or to be dedicated for parks, playgrounds or other public uses;
- (F) Designation of zoning classifications. For duplex, multifamily dwellings, business, shopping centers, churches or other nonpublic uses, exclusive of single-family uses;
- (G) Minimum building setback lines. Front, rear and sides;
- (H) Site data. Including number of residential lots, lot sizes, acreage in parks, etc., total acreage, density of living units per gross acre or part thereof;
- (I) Off-street parking. To scale per lot or tract; and
- (J) Additional information. Title, scale, north arrow, date; applicant's name, address, telephone number, name of company (if incorporated, address and telephone number).

### **Sec. 3-193. Other Preliminary Plans**

When required by Town staff, the tentative or waiver of plat shall be accompanied by profiles showing existing ground surface and proposed street grades, including extensions for a minimum distance of 300 feet beyond the limits of the proposed subdivision; typical cross sections of the proposed grading, roadway and sidewalk; and preliminary plan of proposed sanitary sewers and storm water disposal, with grades and sizes indicated.

### **Sec. 3-194. Draft of Protective Covenants**

The tentative or waiver of plat shall be accompanied by a draft of protective covenants, whereby the sub-divider proposes to regulate land use in the subdivision and otherwise protect the proposed development. Such draft of protective covenants shall include, but not be limited to, the following where applicable:

- (A) Maximum residential density and intensity;
- (B) Maximum number of proposed residential units;
- (C) Maximum square footage of industrial development;
- (D) Maximum square footage of commercial development;

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- (E) Dedication of right-of-way, common area, civic sites, or other lands or easements for public purposes;
- (F) The provision for community infrastructure including, but not limited to, roads, sewers, water, parks, drainage, etc., at no cost to the Town (such as by the creation of a community development district pursuant to Chapter 190, Florida Statutes, a special taxing district, a homeowners association, or other equivalent entity). The manner by which the provision of community infrastructure shall be provided must first have been reviewed by Town staff and approved by the Town Council as set forth in the Code and any other required governmental entity (such as, but not limited to, the Miami-Dade County Board of County Commissioners in the case of a special taxing district or a community development district); and
- (G) An enforcement clause that reserves to the Town the right, but not the obligation, to request to the Miami-Dade County Board of County Commissioners to activate a special taxing district or to otherwise enforce the obligations of the homeowner's association or other ownership entity in the event the homeowner's association or other ownership entity fails to provide for or maintain community infrastructure or otherwise fails to perform its obligations required by the protective covenant. Such clause shall further provide for the right of entry by the Town for the purposes of such maintenance and enforcement or for the provision of infrastructure upon sixty (60) days written notice to each homeowner's association (where applicable) and to each of the property owners within the subdivision. The clause shall further provide that, after the sixty-day notice period has elapsed, the Town Council shall hold a public hearing on the issue affording all interested parties an opportunity to be heard. The Town Council shall then, by ordinance, authorize the Town Manager or his or her designee to enforce such rights in the same manner as the homeowner's association or other ownership entity including, but not limited to, the right to levy and collect assessments against individual owners in the event of non-payment. Such clauses shall not be amended by the homeowner's association or other ownership entity without the prior consent of the Town after a public hearing.

Town staff shall not review the tentative plat unless such draft of protective covenants have been provided to staff at least fifteen (15) business days prior to the Town staff review meeting and which have been reviewed by the Town Attorney for legal sufficiency.



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### **Sec. 3-195. Typical Site Plan**

A site plan shall accompany the tentative plat, and shall comply with the site plan requirements pursuant to Article III.

### **Sec. 3-196. Model and Dry Model Homes and Construction and Sales Trailers**

- (A) Model and dry model homes and construction and sales trailers shall be allowed to be constructed upon the issuance of a building permit by the Department. The construction permit for the model or dry model home or construction or sales trailer shall comply with this Chapter.
- (B) In addition to (A) above, the issuance of a permit for the construction of a construction trailer or trailer used as a sales office, model home or dry model home shall require the institution of platting or tentative platting procedures within ninety (90) days from the date of the permit or the permit shall be deemed null and void and all construction on the approved site shall be removed forthwith. No permit for a dry model home, sales trailer, or model home shall be issued prior to the final plat unless and until the applicant has provided to the Town a hold harmless agreement, in a form to be reviewed and approved by the Town Attorney.
- (C) The applicant for the construction of a model or dry model home shall post with the Town a bond, certified check or irrevocable letter of credit for each model home or dry model home to be constructed under a permit. The purpose of the bond, certified check, or irrevocable letter of credit is to guarantee the Town adequate funds for the removal of the model or dry model homes should they be abandoned by the permittee, in an amount to be determined by the Director.
- (D) Should the permittee desire to convert the model home or dry model home into a residential living unit for sale or for any other purpose, a certificate of occupancy must first be approved by the Town. No certificates of occupancy shall be issued while the structures are deemed model or dry model homes by the Town.

### **Sec.3-197. Final Plat**

In the event the Town accepts the tentative plat, the sub-divider will be required to then prepare the final plat on mylar, with appropriate information included thereon, to be resubmitted to the Department at least fifteen (15) days prior to a regularly scheduled Council meeting. In addition, the applicant shall submit evidence of the lawful formation of a

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homeowner's association or other ownership entity to be reviewed and approved by the Town Attorney for legal sufficiency prior to the final plat being scheduled for review by the Town Council.

- (A) The final plat and declaration of protective covenants (as provided for in Section 3-194) will be reviewed by the Town Council and, if approved, adopted and signed by the Mayor or his or her designee, the sub-divider will then record the other documents with appropriate agencies, including the Town. Any property that is to be maintained by a homeowner's association or other management entity pursuant to the declaration of protective covenants shall be conveyed to the homeowner's association or property owner's association by warranty deed simultaneously upon the recording of the approved final plat, which warranty deed shall be reviewed by the Town Attorney for legal sufficiency.
- (B) The final plat shall not be given full force and effect unless and until the declaration of restrictive covenants (as provided for in Section 3-194) and newly created legal description is provided to the Town by the applicant, has been reviewed and approved by the Town Attorney for legal sufficiency, and recorded in the public records of Miami-Dade County. The final declaration of restrictive covenants shall be supported by an opinion of title prepared by an attorney licensed to practice law in the state of Florida to be provided by the applicant within thirty (30) days prior to recording. All recording costs shall be borne by the applicant.

### **Sec. 3-198. Final Plat Form; contents generally**

- (A) The final plat shall be drawn in black permanent drawing ink on mylar on sheets not to exceed thirty (30) by thirty-six (36) inches and shall be at a scale sufficient in size to show all necessary detail. Where necessary, the plat may be on several sheets, accompanied by an index sheet showing the entire subdivision.
- (B) For large subdivisions the final plat may be submitted for approval progressively in contiguous sections, clearly identified and accompanied by an index sheet.
- (C) The final plat shall show the following:
  - I. Name of the subdivision. The plat shall have a title or name. The full name of the Town must appear in the title or name of the plat subdivision. If the land platted is an addition to land already platted, then the title of the plat shall include, with the name of such addition or subdivision, the township

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and range of which such platted land is a subdivision, or to which it is an addition. The Community Development Department, after consultation with Miami-Dade County Public Works, may disapprove any name which may cause confusion as to the status or the location of any platted property.

2. Deed description. There shall be written or printed upon the plat a full and detailed description of the land embraced in the map or plat showing the township and range in which such lands are situated and the section and part of sections platted and a location sketch showing the plat's location in reference to the closest centers of each section embraced within the plat. The description must be so complete that from it, without reference to the plat, the starting point can be determined and the outlines run. If a subdivision of a part of a previously recorded plat is made, the previous lots and blocks to be replatted shall be given. If the plat is to be a replat of the entire previously recorded plat, the fact shall be so stated. Vacation of previously platted lands must be accomplished in the manner provided by law.
3. Names of adjacent subdivisions.
4. Names or numbers and width of streets immediately adjoining plat.
5. All plat boundaries.
6. Bearings and distances to the nearest established street lines, section corners or other recognized permanent monuments which shall be accurately described on the plat.
7. Municipal, township, county or section lines accurately tied to the lines of the subdivision by distance and bearing.
8. Accurate location of all monuments, control points.
9. Length of all arcs, radii, internal angles, points of curvature and tangent bearings.
10. Where lots are located on a curve or when side lot lines are at angles less than eighty-seven (87) degrees or more than ninety-three (93) degrees, the width of the lot at the front building setback line shall be shown.
11. The name or numbering and right-of-way width of each street or other right-of-way shown on plat.
12. The numbering of all lots and blocks shown on the plat. All lots shall be numbered either by progressive numbers, or in blocks progressively numbered, except that blocks in numbered additions bearing the same

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name shall be numbered consecutively throughout the several additions. Excepted parcels must be marked "not part of this plat."

13. Plat restrictions to restrict type and use of water supply; type and use of sanitary facilities; use and benefits of water areas and other open spaces and odd-shaped and substandard parcels; replat of parcels as "platted," and restrictions of similar nature.
14. All areas reserved or dedicated for public purposes. No strip or parcel of land shall be reserved by the owner, unless the same is sufficient in size and area to be of some practical use or service.
15. The dimensions of all lots and angles or bearings.
16. Minimum building setback lines where required by code.
17. Location, dimension and purpose of any easements.
18. Certification by a licensed professional land surveyor and mapper to the effect that the plat represents a survey made by him or her, and that all monuments shown thereon actually exist, and that their location is correctly shown.
19. An acknowledgment by the owner of his or her adoption of the plat, and of the dedication of streets and other public areas and the consent of any mortgage holders to such adoption and dedication. If existing right-of-way is to be closed, purpose of closing must be stated on the plat.
20. The signature and seal of the governing body.
21. All other data required by the County, the Town, and the state.
22. Title, scale, north arrow and date.

(D) Other data required with plat.

1. Restrictive covenants desired by the developer so long as they do not violate existing ordinances. Restrictive covenants shall be required covering the same restrictions included in subsection (C)(13) of this section; restrictions controlling building lines, establishment and maintenance of buffer strips and walls, and restrictions of similar nature.
2. The licensed land surveyor and mapper shall show on the face of the plat (or shall certify on a separate sheet, not to be recorded in the public records) the Florida State Plane Coordinates (current readjustment) of at least two (2) of the permanent reference monuments shown on the plat. This requirement may be waived by the plat division of the appropriate authority if (A) any portion of the land encompassed by the plat is more

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than one (1) mile from the nearest station shown on the list on file in the Miami-Dade County Public Works Department's Survey Office, as updated; or (B) all stations within one (1) mile of the plat have been lost. A copy of the certified corner record (as defined in Section 177.503 Florida Statutes), for the corners used shall be provided with the final plat.

3. Current opinion of title from any attorney authorized to practice law in this state.
4. Certification from the Town and county that all taxes and assessments have been paid on the land within the proposed subdivision or receipted tax bills.
5. If a zoning change is involved, certification from the appropriate agency shall be furnished indicating that the change requested has been approved and is in effect, and that the size of lots and other features shown on the plat conform to all zoning requirements. Signing of the final plat by the Director of that agency shall constitute such certification.

### **Sec. 3-199. Deed and Easement Submission**

For the purposes of this Chapter, every deed, easement, or other document conveying, transferring or dedicating an interest in real property to the Town must be in a form and substance as prescribed by applicable law and otherwise acceptable to the Town Attorney. Quitclaim forms of deeds, easements or other documents are unacceptable. The deed, easement or other document must be accompanied by:

- (A) An opinion of title of an attorney, licensed in Florida, or an owner's policy of title insurance from a licensed Florida title company (with an effective date no earlier than thirty (30) days prior to submission), certifying that the parties executing or joining in such deed, easement or other document are all of the current record owners of the property, and setting forth all exceptions to title for the property including holders of unsatisfied mortgages on the property (which must be satisfied or released prior to acceptance by the Town), and any other party holding any record interest in the property, and
- (B) A lien, possession and encumbrance affidavit executed by the current record owners of the property.

The form and substance of the opinion of title and lien, possession and encumbrance affidavit shall be in a form and substance prescribed by the Town Attorney from time to

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

time. Title to the property that is the subject of such deed, easement, or other document must be free and clear of all liens, encumbrances, tenancies, restrictions, and rights of third parties, subject only to title exceptions acceptable to the Town. The current record owner(s) of the property shall also provide proof of compliance with the provisions of Sec. 196.295 Florida Statutes or any successor legislation thereto, regarding the escrowing of real estate taxes.

### **Sec. 3-200. Required Improvements and Submissions**

The following materials shall accompany the final plat required by this sub-article:

- (A) Cross sections and profiles of streets, showing grades approved by the Town. Profiles shall be drawn to Town standard scales and elevations and shall be based upon a datum plane approved by the Town.
- (B) Certificate by Town, certifying that the sub-divider has complied with one (1) of the following alternatives:
  - 1. All improvements have been installed as required by these regulations and with the action of Town staff, giving conditional approval of the tentative plat; or
  - 2. A bond, certified check, or irrevocable letter of credit that has been reviewed and approved by the Town Attorney's office has been posted with the Town, running in favor of the Town in the amount of 110 percent of the cost of improvements, to assure the ultimate completion of all required improvements. Upon approval of the Town that the improvements are complete, the security may be released.
- (C) Signed certified copies of all utility installations.
- (D) Protective covenants, in form for recording.
- (E) Other data. Such data other certificates, affidavits, endorsements or deductions as may be required by Town staff and Town Council, in the enforcement of this Article.

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## **Sec. 3-201.     Revising Plat after Approval**

No changes, erasures, modifications or revisions shall be made in any plat of a subdivision after approval has been given of the final plat, with the exception of scrivener's errors, unless the plat is re-submitted for a new approval.

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## Article XIII

### CONDITIONAL USES

#### Sec. 3-210. Purpose

There are certain uses which may be constructed, continued, and/or expanded provided they meet certain mitigating conditions specific to their design and/or operation. Such conditions ensure compatibility among building types so that different uses may be located in proximity to one another without adverse affects to either. Each use shall be permitted in compliance with the conditions listed in this Article.

#### Sec. 3-211. Evaluation Criteria

In evaluating an approval of a conditional use under this code, the following evaluation criteria are to apply. It is the applicant's responsibility to justify that each one of the following criteria is met.

1. Compliance with the Town's Growth Management Plan.
2. Consistent with the "character and purpose" of the zoning district.
3. The size, shape and character of the property are suited for the proposed use.
4. Is compatible with the exiting uses near the property.
5. Will not adversely affect the development of the general neighborhood or district.
6. Will not generate vehicular traffic or create vehicular circulation problems or parking demands that have an unfavorable impact on surrounding properties when compared with uses permitted by right in the same district.
7. Potential for fire and/or other equally or greater dangerous hazards.
8. Create an unfavorable environmental impact on surrounding uses (e.g. noise, glare, smoke, dust, odor, fumes, water pollution, or general nuisance).
9. Is consistent with existing and planned pedestrian and vehicular circulation adjacent to and near the property.
10. Site is adequately served by essential public services and facilities not requiring additional public expense in infrastructure improvements.
11. Will not adversely affect any site or feature of historical, cultural, natural or scenic importance.



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12. Will not be contrary to the public health, safety, and welfare, provided that a denial based exclusively on this language shall include explicitly findings regarding the way in which granting the special exception would be contrary to the public health, safety and welfare.

### **Sec. 3-212. Uses and Conditions**

The following uses are not permitted by right. The additional conditional use standards in this section will apply when there is a need for a conditional use approval. Conditional uses are approved after a public hearing by the Town Council.

#### **A. Amusement Facility (*Transit Corridor District*)**

1. Outdoor amusement lots shall be separated by an opaque hedge screen at least six (6) feet in height from any abutting property located in a residential or mixed use district.
2. No amusement facilities, such as miniature golf courses, skateboard courses, or mechanical rides shall be located within 200 feet of any abutting property located in a residential district.
3. Hours of operation shall be no earlier than 8:00 a.m. and no later than 11:00 p.m.

#### **B. Automotive / Boat / Truck Sales, Service, and Repair (*Transit Corridor and Town Center Districts*)**

1. Large surface parking/display lots shall be visually and functionally segmented into several smaller lots, no larger than thirty-six (36) parking spaces, eighteen (18) feet long and nine (9) feet wide each.
2. The size of any single lot shall be limited to 1.5 acres, unless divided by a street, principal building, or fifteen (15) foot landscape buffer area. All areas shall be connected internally with sidewalks and landscaping following the requirements of this code.
3. No outdoor public address system shall be permitted which can be heard beyond the boundaries of the property.
4. Service and repair activities shall operate during regular business hours, no earlier than 7:00 a.m. and no later than 8:00 p.m.
5. Service and repair activities are not permitted outdoor.

#### **C. Bar and Nightclub (*Neighborhood Center and Transit Corridor Districts*)**

1. No Bar or Nightclub shall be permitted within 300 feet of any ER or SR district, religious facility, or civic use.
2. Parking requirements may be satisfied using shared parking, off-street parking areas, or on-street parking. These types of arrangements require

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

the submittal and approval of a parking plan, prepared by a traffic engineer indicating method to prevent the encroachment of parking into any adjacent area, following the shared parking requirements of Article X.

D. *Conservatory, Health and Fitness, Martial Arts or Dance Studio (Neighborhood Center District)*

- I. When determining impacts on surrounding uses and neighborhood compatibility, traffic and on-site stacking and circulation shall be considered. The applicant will be required to submit a traffic management plan prior to conditional use approval. The plan must be prepared by a qualified traffic engineer and indicates methods to resolve internal/external traffic conflicts due to ingress, egress, stacking, drop-off, pick-up, and other parking issues related to the site and adjoining properties. The plan should be supported by a traffic study which demonstrates that vehicular access and circulation standards are being met and that pedestrian and vehicular circulation can be provided in an efficient and safe manner.

E. *Drive-Thru (Neighborhood Center and Town Center Districts)*

- I. Vehicle storage for drive-thru windows shall be located outside of and physically separated from right-of-way of any street. The area shall not interfere with efficient internal circulation of traffic on the site, adjacent property, or adjacent street right-of-way.
2. Drive-thru window facilities shall be screened from off-site view and street rights-of-way by a landscape buffer with a minimum width of ten (10) feet, extending along the entire length of the drive thru queuing or stacking area. A permanent porte-cochere may be constructed over the drive thru at the service window area. It shall be a minimum of ten (10) feet in width, extend the width of the drive, be integrated structurally into the building, and match the architecture of the building. The porte-cochere may not encroach into the side setback.

F. *Educational Facility/School [Public or Private] (Neighborhood Center and Institutional Districts)*

- I. When determining impacts on surrounding uses and neighborhood compatibility, traffic and on-site stacking and circulation shall be considered. The applicant will be required to submit a traffic management plan prior to conditional use approval. The plan must be prepared by a

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

qualified traffic engineer and indicates methods to resolve internal/external traffic conflicts due to ingress, egress, stacking, drop-off, pick-up, and other parking issues related to the site and adjoining properties. The plan should be supported by a traffic study which demonstrates that vehicular access and circulation standards are being met and that pedestrian and vehicular circulation can be provided in an efficient and safe manner.

2. All traffic calming, signage and any proposed changes to traffic lanes on any roadways associated with the school must obtain prior approval from Miami-Dade County Public Works Department.
3. All outdoor play areas shall be buffered from any residential uses for the purpose of mitigating noise.
4. No off-site parking or queuing is permitted at anytime of the day.
5. An accumulation assessment is required to meet all Miami-Dade County standards

### G. *Neighborhood Convenience Store (Neighborhood Center)*

1. Shall have no more than two fuel service islands serving no more than four (4) vehicles at any one time.
2. Buildings shall meet the requirements of Article VI.
3. Pumps, canopies, and associated service areas are prohibited within any required yard and fifteen (15) feet of an abutting street.
4. The building shall not exceed 5,000 SF in gross floor area.

### H. *Office (with fifty (50) or more parking spaces) (Neighborhood Center)*

1. When determining impacts on surrounding uses and neighborhood compatibility, traffic and on-site stacking and circulation shall be considered. The applicant will be required to submit a traffic management plan prior to conditional use approval. The plan must be prepared by a qualified traffic engineer and indicates methods to resolve internal/external traffic conflicts due to ingress, egress, stacking, and other parking issues related to the site and adjoining properties. The plan should be supported by a traffic study which demonstrates that vehicular access and circulation standards are being met and that pedestrian and vehicular circulation can be provided in an efficient and safe manner.

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### I. *Parking Structure (Transit Corridor and Town Center Districts)*

- I. Parking structures shall be wrapped by commercial, office, and/or other permitted uses within the district along first level street edges. The structures primary façade adjoining streets shall incorporate two of the following:
  - a. Transparent display windows where pedestrian oriented businesses are located along the façade of the parking structure.
  - b. Decorative metal grille-work or similar detailing which provides texture and partially and/or fully covers the parking structure openings
  - c. Art or architectural treatment such as sculpture, mosaic, glass block, opaque art glass, relief work, or similar features
  - d. Vertical trellis or other landscaping or pedestrian plaza area

### J. *Veterinarian Office (Neighborhood Center)*

- I. Applicant shall provide an adjacent, enclosed lawn area greater than 500 square feet for walking of animals and provide an ancillary plan for picking up and disposing of any animal waste.

### K. *Pain Management Clinic (Transit District)*

- I. The review of a conditional use application for a pain management clinic may include the consideration of the specific registration criteria for pain management clinics in Section 458.3265 and 459.0137, Florida Statutes, as may be amended from time to time.
2. Prior to issuance of a certificate of use, a pain management clinic shall provide proof of registration with the Florida Department of Health.
3. The full disclosure of the owners and operators of the facility are required at the time of the application for conditional use.
4. An approved pain management clinic shall at the time of annual renewal of its business tax receipt, update its disclosure of the owners and operators of the facility and the clinic's designated physicians in accordance with Section 465.022, Florida Statutes. The pain management clinic shall immediately report any change to this disclosure.
5. The hours of operations shall be limited to 7:00 a.m. to 9:00 p.m., Monday through Saturday.

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6. It is prohibited for the facility to operate any outdoor seating areas, queues or exterior customer waiting areas at any time. No activities shall be conducted outside of a completely enclosed structure.
  7. No pain management clinic shall be permitted to locate within a 1,000 foot radius of any pharmacy, another pain management clinic, child care center, religious facility or K-12 grade educational facility (public or private). The application for a conditional use approval shall include a certified survey indicating the distance in linear feet between the nearest point of the structure of the proposed pain management clinic and the nearest point of the structure of any existing pharmacy, pain management clinic, child care center, religious facility or K-12 grade educational facility (public or private).
- L. *Gold Buying Business (Transit District)*
- Any business that operates exclusively to buy gold from the public, and is not a retail jewelry store, will be subject to approval by the Town Council at a public hearing.
- M. *Retail [Exceeding 25,000 SF but less than 55,000 SF as a single use](Neighborhood Center District)*
- When determining impacts on surrounding uses and neighborhood compatibility, traffic and on-site stacking and circulation shall be considered. The applicant will be required to submit a traffic management plan prior to conditional use approval. The plan must be prepared by a qualified traffic engineer and indicates methods to resolved internal/external traffic conflicts due to ingress, egress, stacking, and other parking issues related to the site and adjoining properties. The plan should be supported by a traffic study which demonstrates that vehicular access and circulation standards are being met and that pedestrian and vehicular circulation can be provided in an efficient and safe manner.
- N. *Child Care Facility (Neighborhood Center District and Institutional District)*
- I. May be located on lots located which provide ample open area in the form of a rear yard a minimum of 2,500 square feet. A center located adjacent to a park is exempt from this provision.

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2. Rear yards shall be fenced or walled. The height for such walls or fences shall be six (6) feet. Required recreational areas shall only be allowed within rear yards.
3. All equipment shall be stored in the rear yard. Front yards shall not be fenced, nor used as playground areas.
4. Require submittal and approval of a traffic impact/traffic management plan prior to site plan approval. The study must be prepared by a qualified traffic engineer and indicates methods to resolve internal/external traffic conflicts due to ingress, egress, stacking, drop-off, pick-up, and other parking issues related to the site and adjoining properties. The study shall demonstrate that vehicular access and circulation standards are being met and that pedestrian and vehicular circulation can be provided in an efficient and safe manner.

## **Article XIV**

### **WIRELESS TELECOMMUNICATIONS FACILITIES**

**Sec. 3-220. Purpose**

The regulations and requirements establish general guidelines for the siting of wireless telecommunications towers and antennas and are intended to accomplish the following purposes:

- (A) Protect and promote the public health, safety and general welfare of the residents of the Town;
- (B) Minimize residential areas and land uses from potential adverse impacts of towers and antennas;
- (C) Encourage the location of towers in non-residential areas and to locate them, to the extent possible, in areas where the adverse impact on the community is minimal;
- (D) Minimize the total number of towers throughout the community by strongly encouraging the collocation of antennas on new and pre-existing tower sites as a primary option rather than construction of additional single-use telecommunications towers;
- (E) Encourage users of telecommunications towers and antennas to configure them in a way that minimizes the adverse visual impact of the telecommunications towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (F) Minimize potential damage to property from telecommunications towers and telecommunications facilities by requiring such structures be soundly designed, constructed, modified and maintained; and
- (G) Enhance the ability of the providers of telecommunications services to provide such services to the community through an efficient and timely application process. In furtherance of these goals, the Town shall at all times give due consideration to the Town's master telecommunications plan, comprehensive plan, zoning map, existing land uses, and environmentally sensitive areas, including hurricane

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preparedness areas, in approving sites for the location of telecommunications towers and antennas.

## **Sec. 3-221. Authority**

The regulations and requirements establish general guidelines for the siting of wireless telecommunications towers and antennas and are applicable as follows:

- (A) All new wireless communications facilities and reconstruction or modifications to existing wireless communications facilities in the Town shall be subject to the regulations in this Article to the full extent permitted under applicable state and federal law;
- (B) Pre-existing telecommunications towers or antennas shall not be required to meet the requirements of this Article, other than the specific requirements set forth herein;
- (C) This Article shall not specifically govern any broadcasting facility or a wireless communications facility owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas, provided by applicable law;
- (D) This Article shall apply to applications for wireless communications facilities, telecommunications towers, and antennas as defined herein unless prohibited by applicable law;
- (E) The providing of personal wireless services and the siting and construction of wireless communications facilities shall be regulated and permitted pursuant to this Article and shall not be regulated or permitted as essential services or public safety telecommunications as defined herein;
- (F) Except for matters herein specifically reserved to the Town Council, the Community Development Director shall be the principal Town official responsible for the administration of this Article. The Community Development Director may delegate any or all of the duties hereunder unless prohibited by applicable law;
- (G) For purposes of implementing this Article, an AM array, consisting of one or more Tower units and supporting ground system which functions as one AM broadcasting antenna, shall be considered one tower. Measurements for setbacks and separation distances shall be measured from the outer perimeter of the



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

towers included in the AM array. Additional tower units may be added within the perimeter of the AM array by right; and

- (H) The Town may create an application form as may be amended from time to time, for a person to apply for the construction, installation, or placement of a wireless communications facility, telecommunications tower, or antenna within the Town consistent with the terms of this Article. The Town may create a different application form for collocation applications.

### **Sec. 3-222. Application Requirements**

The following information must be included in all applications including applications for installations of telecommunications towers and antennas but excluding collocation applications:

- (A) Current survey of the property;
- (B) Description of the telecommunications services currently provided and/or to be provided in the future by the applicant over its wireless communications facilities;
- (C) Location of the proposed facilities;
- (D) Identify the location of all overhead and underground public utility, telecommunication cable, water, sewer, drainage and other facilities;
- (E) Identify the trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate;
- (F) Identify all applicable Federal Communications Commission (FCC) licenses and approvals;
- (G) Statement that applicant shall notify all other telecommunication providers of the permit application at time application is accepted by the Community Development Director;
- (H) Any application submitted to the Town for construction or installation of a telecommunication tower or wireless communications facility shall demonstrate that the proposed structure conforms with the state of the art technology or alternatively that state of the art technology is unsuitable for the site involved. Costs of state of the art technology that exceed new tower development shall not be presumed to render the technology unsuitable;

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- (I) A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or telecommunications tower on such lot;
- (J) For purposes of determining whether the installation of a telecommunications tower or antenna complies with the zoning provisions including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antenna or telecommunications tower may be located on leased parcels within such lot;
- (K) Each applicant shall provide the Town with an inventory of its pre-existing telecommunications towers and antennas and the pre-existing sites of any other telecommunications towers, antennas and wireless communications facilities within a three (3) mile radius of the Town;
- (L) For applications for new telecommunications towers, the applicant must provide information to demonstrate pursuant to the procedures listed within this subsection that no pre-existing tower structures or state of the art technology that does not require the use of new telecommunications towers or new structures, can accommodate or be modified to accommodate the applicants proposed telecommunications tower. Evidence submitted to demonstrate that no pre-existing tower, existing structure, state of the art technology is suitable may consist of an affidavit from an engineer licensed to practice in the state of Florida or by an engineer exempt from such requirement under Florida law and with experience with radio frequency and wireless communications facilities, determining or demonstrating the following:
  - 1. That pre-existing towers or existing structures located within the geographic search area do not have the capacity to provide reasonable technical service consistent with the applicant's technical system, including but not limited to, applicable FCC requirements;
  - 2. That pre-existing or existing structures are not of sufficient height to meet applicable FCC requirements or engineering requirements of the applicant;
  - 3. That pre-existing towers or existing structures do not have sufficient structural strength to support applicants proposed antenna and related equipment;
  - 4. That the applicants proposed antenna would cause electromagnetic/radio frequency interference with antennas on pre-existing towers, antennas,

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existing structures, or the antenna on the pre-existing towers or structures cause interference with the applicants proposed antenna;

5. That the applicant's proposed antenna on a pre-existing tower or existing structure would cause interference with public safety telecommunications;
6. That the applicant made diligent efforts but was unable to obtain permission to install or collocate the applicant's wireless communications facilities on pre-existing towers or usable antenna support within a one (1) mile radius from the proposed site;
7. That there are other limiting factors that render pre-existing towers and existing structures unsuitable.

(M) An Engineering Report from an engineer licensed to practice in the state of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and wireless communications facilities, and shall include:

- I. A site development plan of the entire subject property drawn to scale, including, without limitation;
  - (a) A tax parcel number, legal description of the parent tract and leased parcel, total acres, and Section/Township/Range of the subject property;
  - (b) The lease parcel fully dimensioned, including property lines, setbacks, roads on or adjacent to the subject property, easements;
  - (c) Outline of all existing buildings, including purpose (i.e. residential buildings, garages, accessory structures, etc.) on subject property;
  - (d) All existing vegetation, by mass or individually by diameter, measured four feet from the ground of each stand alone tree on the subject property;
  - (e) Proposed/existing security barrier, indicating type and extent as well as point of controlled entry;
  - (f) Proposed/existing access easements, utility easements, and parking for the telecommunications tower;

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- (g) All proposed changes to the subject property including grading, vegetation removal, temporary or permanent roads and driveways, storm water management facilities and any other construction or development attendant to the telecommunications tower;
  - (h) Scaled elevation drawing of proposed telecommunications tower including location of all mounts, antennas, equipment facilities, fencing and landscaping;
  - (i) If applicable, on-site and adjacent land uses.
- 2. If applicable, a narrative of why the proposed telecommunications tower cannot comply with the requirements of the engineering report.
- 3. The type of telecommunications tower and specific design information shall be provided for the antennas, mounts, equipment facilities, cables as well as cable runs, and security barrier, if any. The following specific information shall be provided:
  - (a) Equipment brochures for the proposed tower such as manufacturers' specifications or trade journal reprints.
  - (b) Materials of the proposed tower specified by generic type and specific treatment (i.e. anodized aluminum, stained wood, painted fiberglass etc.)
  - (c) Colors of the proposed tower represented by a color board showing actual colors proposed.
  - (d) Dimensions of the tower specified for all three directions: height, width and breadth, and
  - (e) A visual impact analysis with a minimum of two (2) photo digitalization or photographic superimpositions of the tower within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments including the antennas, mounts, equipment facilities, cables as well as cable runs, and security barrier, if any for the total height, width and breadth as well as at a distance of 250 feet and 500 feet from all properties within that range or at other points agreed upon in a pre-application conference.

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4. Current wind-loading capacity and projection of wind-loading capacity using different types of antennas as contemplated by the applicant. No telecommunications tower shall be permitted to exceed its wind loading capacity as provided for by the Florida Building Code.
  5. An affidavit from an engineer licensed to practice in the state of Florida or by an engineer exempt from such requirement under Florida law and with experience with radio frequency and wireless communications facilities stating that the proposed telecommunications tower, including reception and transmission functions, will not interfere with the visual and customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by adjacent residential and non-residential properties.
  6. An affidavit from an engineer licensed to practice in the state of Florida or by an engineer exempt from such requirement under Florida law and with experience with radio frequency and wireless communications facilities stating confirming compliance with all applicable building codes associated regulations and safety standards. For all towers attached to existing structures, the statement shall include certification that the structure can support the load superimposed from the telecommunications tower.
- (N) If applicable, a copy of the executed lease agreement of the property where the wireless communications facility and/or tower will be located;
- (O) Additional information that the Town may request consistent with this code and applicable law to process the application. In the event the Town requests any additional information, the time in which an application is processed shall be tolled pending receipt and further evaluation;
- (P) The Town shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate applications for individual towers. The consultant fee shall be based upon the hourly rate of the independent technical consultant or expert the Town deems necessary to properly evaluate an applications for a tower. The special fee shall be applied to those applications requiring special review or evaluation. The special fee shall be reimbursed by the applicant to the Town;

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(Q) To the extent not prohibited by applicable law, any application for a wireless communications facility shall also include:

1. A certification from an engineer licensed to practice in the state of Florida or by an engineer exempt from such requirement under Florida law, and with experience with radio frequency and wireless communications facilities that the proposed facility including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from existing public safety telecommunications facilities;
2. A remedial action plan, subject to the Town approval, that includes, but is not limited to, procedures to rectify any interference or obstruction with public safety telecommunications, its plans to make all necessary repairs and/or accommodations to alleviate the interference or obstruction, and a period of compliance.

(R) If the applicant seeks relief from any regulation contained herein, the applicant must provide the nature of the specific relief sought and the engineering justification to demonstrate that without such relief, applicability of the regulation would have the effect of prohibiting the provision of personal wireless services.

### **Sec. 3-223. Application Requirements for Collocations**

The following information must be included in all collocation applications:

- A. An engineering report from an engineer licensed to practice in the state of Florida or by an engineer exempt from such requirement under Florida law and with experience with radio frequency and wireless Communications Facilities that shall include:
  1. A statement of compliance with this Article and all applicable building codes, associated regulations and safety standards as provided herein. The statement shall include certification that the existing structure can support the load superimposed from the antennas;
  2. The type of antenna and specific design information shall be provided for all antennas, mounts, equipment facilities, cables as well as cable runs, and security barrier, if any. The following specific information shall be provided:
    - a. Equipment brochures for the proposed antenna such as manufacturer's specifications or trade journal reprints;

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- b. Materials of the proposed antenna specified by generic type and specific treatment (i.e. anodized aluminum, stained wood, painted fiberglass etc.);
  - c. Colors of the proposed antenna represented by a color board showing actual colors proposed;
  - d. Dimensions of the proposed antenna specified for all three directions, height width and breadth;
  - e. A visual impact analysis with a minimum of two (2) photo digitalization or photographic superimpositions of the pre-existing and proposed antenna within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments including the antennas, mounts, equipment facilities, cables, as well as cable runs and security barrier, if any for the total height, width and breadth as well as at a distance of 250 feet and 500 feet from all properties within that range or at other points agreed upon in a pre-application conference;
  - f. Current wind-loading capacity and a projection of wind-loading capacity using different types of antennas as contemplated by the applicant. No telecommunications tower shall be permitted to exceed its wind loading capacity as provided for by the Florida Building Code;
  - g. A certification that the proposed antenna, including reception and transmission functions, is not expected to interfere with or obstruct transmission to and from existing public safety telecommunications facilities or any other telecommunications services;
  - h. A description of geographical service area requirements; and
  - i. If necessary, a remedial action plan, subject to the Town's approval, that includes but is not limited to procedures to rectify any interference or obstruction with public safety telecommunications, its plans to make all necessary repairs and/or accommodations to alleviate the interference or obstruction, and a period of compliance.
- B. Each applicant shall provide the Town with an inventory of its pre-existing telecommunications towers and antennas and the pre-existing sites of any other telecommunications, antennas and wireless communications facilities within a three (3) mile radius of the Town.
- C. A copy of the executed lease agreement of the tower where the wireless communications facility and/or antenna will be collocated; and

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- D. Additional information that the Town may request consistent with this Article and applicable law to process the application. In the event the Town requests any additional information, the time in which an application is processed shall be tolled pending receipt and further evaluation.

### **Sec. 3-224. Installations on Municipal Property**

Applications for wireless communications facility on property owned, leased or otherwise controlled by the Town, except for public rights-of-way, shall require a lease agreement approved by the Town Council and executed by the Town and the owner of the proposed wireless communications facility. The Town may require, as a condition of entering into a lease agreement, the dedication of space on the facility for public safety telecommunications purposes, as well as property improvements on the leased space. Any dedications and improvements shall be negotiated prior to execution of the lease.

- (A) No lease granted pursuant to this Article shall convey the exclusive right, privilege, permit or franchise to occupy or to use the public lands of the Town for delivery of personal wireless services or any other purpose.
- (B) No lease granted pursuant to this Article shall convey any right, title or interest in the public lands other than a leasehold interest, and shall be deemed only to allow the use of the public lands for the limited purposes and term stated in the lease. No lease shall be construed as a conveyance of a title interest in the property.
- (C) Any and all collocations or placements of antennas on a wireless communications facility that is located on property owned, leased or otherwise controlled by the Town, except for public right-of-way, shall require a separate lease agreement with the Town as well as full compliance with the requirements of this ordinance for such collocations and placements of antennas.
- (D) Pursuant to applicable law, the Town may contract with a third party to administer Town-owned property for purposes of developing Town-owned sites, consistent with the terms of this Article. Except as specifically provided herein, the terms of this Article, and the requirements established thereby, shall be applicable to all telecommunication towers or personal wireless service facilities to be developed or collocated on Town-owned sites.
- (E) Town-owned property is exempt from the minimum distance separation and height requirements set forth herein.



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## **Sec. 3-225. Collocation**

- (A) It is the intent of the Town to encourage collocation of antennas on existing structures and pre-existing towers. Except as provided herein, all towers shall have the capacity to permit multiple users. At a minimum, monopole towers shall be able to accommodate two (2) users and, at a minimum, lattice or guyed towers shall be able to accommodate three (3) users.
- (B) To encourage such collocation, the Community Development Director may approve an application submitted to collocate antennas on an existing structure, a pre-existing tower, or a stealth facility, consistent with this Article. The specific collocation applications indicated in the sub-sections below shall be subject to approval or denial by the Community Development Director. All other applications shall be subject to approval or denial by the Town Council.
- (C) Any antenna and related equipment to service the antenna that is being collocated on an above ground existing structure is not subject to other Land Development Regulations of this Chapter of the Town Code if the following criteria are met:
  - 1. The existing structure already contains an established antenna and related equipment;
  - 2. The existing structure is not non-conforming and may pursuant to Florida law be expanded; and
  - 3. The height of the structure containing the antenna and related equipment would not be increased by the addition of antenna and related equipment.
- (D) Notwithstanding the exemption provided for in this section, construction of the antenna and related equipment is subject to review by the Community Development Director and any other Town department or agency for compliance with the Town's design standards; and life safety codes, including but not limited to Building Codes; conditions or requirements in any existing permits, agreements, or approvals. Moreover, this section shall not relieve the permit holder for or owner of the Existing Structure or property of compliance with any applicable condition or requirement of a permit, agreement, or Land Development Regulation, including but not limited to any aesthetic requirements, or law.

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(E) Collocation Applications Requiring only Community Development Director Approval.

1. Collocations on towers, including nonconforming towers are subject to only building permit review, which may include a review for compliance with this Article, if they meet the following requirements:

- (a) The collocation does not increase the height;
- (b) The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment facilities and ancillary facilities, except as allowed under this Article; and
- (c) The collocation consists of antennas, equipment facilities, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennas placed on the tower and to its accompanying equipment facilities and ancillary facilities and, if applicable, applied to the tower supporting the antennas. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the applicable Land Development Regulations in effect at the time the initial antennas placement was approved.

2. Such collocations are not subject to any design or placement requirements of Land Development Regulations in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antennas placement approval, to any other portion of the Land Development Regulations, or to public hearing review. Such collocation applications are not subject to the Town Council's approval and shall be decided by the Community Development Director.

(F) Other Collocation Applications Requiring only Community Development Director Approval.

1. Except for a historic building, structure, site, object, or district, the following tower collocation applications on all other existing structures

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shall also be subject to no more than a Community Development Director review if they meet the following requirements:

- (a) The collocation does not increase the height;
- (b) The collocation does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;
- (c) The collocation consists of antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this section of the Article at the time of the collocation application; and
- (d) The collocation consists of antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with sub-section (c) and were applied to the initial antennas placed on the structure and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennas.
- (e) If only a portion of the collocation does not meet the requirements of any of the above sub-sections, such as an increase in the height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the collocation meet the requirements of this subsection, that portion of the collocation only may be reviewed by the Town Council. A collocation proposal under this subsection that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment facilities and ancillary facilities by 400 or more square feet or 50 percent or more of the original compound size, shall,

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however, be reviewed as if it were a new wireless communications facility.

- (G) The replacement of or modification to a wireless communications facility, except a tower, that results in a wireless communications facility not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the Town, shall be deemed an application for collocation.
- (H) The owner of the pre-existing tower on which the proposed antennas are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of other provisions of these Land Development Regulations to which the pre-existing tower must comply, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this section.

### **Sec. 3-226. Interference with Public Safety Telecommunications**

- (A) To the extent not inconsistent with applicable federal law, all providers of personal wireless services and all owners and/or operators of wireless communications facilities, towers and antennas shall comply with the following:
  - 1. Any wireless communications facility, tower, or antenna that causes interference with the operations of public safety telecommunications services, shall, after receiving notice, rectify the interference immediately or, to the extent not inconsistent with applicable law, cease transmitting signals (go off the air) at once.
  - 2. In the event that the wireless communications facility, tower, or antenna interferes with public safety telecommunications, it shall be the responsibility of the owner and/or operator that creates the interference to make all necessary repairs and/or accommodations to alleviate the problem at its expense. The Town shall be held harmless in this occurrence.
  - 3. In the event that a provider of personal wireless services and/or an owner and/or operator of wireless communications facility, tower, and/or antenna interferes with public safety telecommunications, once it ceases

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transmission of signals (goes off the air) and rectifies the interference, it may not continue to resume providing personal wireless services until it receives approval from the Town.

4. To the extent not inconsistent with applicable law, if a provider of personal wireless services or the owner or operator of a wireless communications facility, tower or antenna refuses to stop the interference or to cease transmitting signals as required herein, the Town may file a complaint with the FCC for resolution and/or seek an injunction against it pursuant to Sec. 843.025 Florida Statutes that makes it unlawful for any person to deprive a law enforcement officer of his or her radio or to otherwise deprive the officer of the means to summon assistance, or pursue any other remedy authorized by applicable law. Any person who is found to have violated this Article shall be punished as provided by applicable law.

### **Sec. 3-227. Development, Zoning, Building and Inspection Requirements for Wireless Communications Facilities**

- (A) The standards listed in this Article apply specifically to all antennas, towers and wireless communications facilities, except those owned by the Town, located on property owned, leased, or otherwise controlled and approved by the Town or as otherwise specified herein. The Town reserves the right to modify or waive the requirements for use on public property. The Town shall not be required to provide access to Town property.
- (B) The construction, maintenance, operation and repair of wireless communications facilities are subject to the regulatory supervision of the Town to the full extent permitted by applicable law, and shall be performed in compliance with all laws, ordinances and practices affecting such facility including, but not limited to, zoning codes, building codes, and safety codes, and as provided in this Article. The construction, maintenance, operation and repair shall be performed in a manner consistent with applicable industry standards, including the Electronic Industries Association.
- (C) All telecommunication towers and antennas must meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the FCC, including emissions standards, and any other agency of the local, state or federal

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government with the authority to regulate towers and antennas prior to issuance of a building permit by the Town. If such applicable standards and regulations are revised and require that existing facilities adhere to such revised standards, then the owners of telecommunications towers and antennas governed by this Article shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the telecommunications tower, antenna or wireless communications facility at the owner's expense.

- (D) To ensure the structural integrity of telecommunications towers installed, the owner shall construct and maintain telecommunications tower in compliance with the Florida Building Code, and all other applicable codes and standards, as amended from time to time. A statement shall be submitted to the Town by a licensed engineer certifying compliance with this section upon completion of construction and/or subsequent modification. Where an existing structure, including poles, is requested as a stealth facility, the facility, and all modifications thereof, shall comply with all requirements as provided in this Article and all other applicable standards as may be amended from time to time. Following the issuance of a building permit, the Town shall require an analysis of a soil sample from the base of the telecommunications tower site.
- (E) Telecommunications towers, wireless communications facilities and antenna owners shall submit an annual report to the Community Development Director within the last thirty (30) days of the Town's fiscal year, each year, including, but not limited to:
  - 1. A summary of any and all complaints of interference with public safety telecommunications within the Town that includes remedial measures that were taken to rectify or eliminate interference, and any other information which may be reasonably required to monitor the telecommunication towers and antenna owner's compliance with this Article; and
  - 2. A certification of the wireless communications facilities, towers or antenna's structural and electrical integrity.

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- (F) The Town reserves the right to conduct periodic inspection of wireless communications facilities, towers, and antennas at the owner's expense, to ensure structural and electrical integrity and compliance with this Article. The owner of the wireless communications facilities, towers, or antennas may be required by the Town to have more frequent inspections should there be an emergency, extraordinary conditions or other reason to believe that the structural and electrical integrity of the wireless communications facility, tower, or antenna is jeopardized. There shall be a maximum of one inspection per year unless emergency or extraordinary conditions warrant additional inspections. The owner of wireless communications facility, tower or antenna may be required by the Town to have more frequent inspections should there be reason to believe that the structural and electrical integrity of the tower is jeopardized. If, upon inspection, the Town concludes that a wireless communications facility, tower, or antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner, the owner shall commence work within thirty (30) days to bring such wireless communications facility, tower, or antenna into compliance with such standards. Failure to bring such wireless communications facility into compliance within sixty (60) days of notice shall constitute grounds for requiring the removal of the facility at the owner's expense. The Town reserves the right to require additional inspections if there is evidence that a tower or a wireless communications facility has a safety problem or is exposed to extraordinary conditions. During the inspection, the Community Development Director will ensure structural and electrical integrity and compliance with the Florida Building Code, as amended, the Code of the Town, as amended, and other applicable codes and regulations. Additionally, towers shall be inspected once every five (5) years by a Florida licensed engineer, at the tower owner's expense, and the results submitted to the Community Development Director. Tower owners shall also submit a report to the Town certifying structural and electrical integrity every two (2) years. The report shall be accompanied by a non-refundable fee of \$200.00 to reimburse the Town for the cost of review. Based upon the results of the inspection, the Community Development Director may require repair or removal of a wireless communications facility or tower.
- (G) The Town prohibits the placement of a telecommunications tower and antennas in a residential area or residential zoning district unless the applicant demonstrates to the satisfaction of the Town that it cannot reasonably provide its personal wireless

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service to the residential area or zone from outside the residential area or zone. In such a case, the Town and the applicant shall cooperate to determine an appropriate location for an antenna of an appropriate design within the residential area or zone. The applicant shall reimburse any and all reasonable costs and expenses incurred by the Town for this cooperative determination, including attorney's fees. Such application for cooperation shall be accompanied by an application fee in the same amount as for a new tower. The cooperation application shall not be subject to the timeframes contained in this Code for granting and denying applications.

(H) Wireless communications facilities shall be permitted in the following preferred zoning districts and siting alternatives hierarchies.

1. Town-owned property, regardless of zoning district is the first priority for siting of wireless communications facilities. The preferred zoning districts order of ranking is from highest (a) to lowest (g). Where a lower ranked alternative is proposed, the applicant must demonstrate in its application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.

- (a) Parks;
- (b) Public;
- (c) Town Center;
- (d) Transit Corridor;
- (e) Planned Development;
- (f) Multi-Family Residential; and
- (g) Any other zoning district in accordance with paragraph G. above.

2. The order of ranking for siting alternatives is from highest (a) to lowest (g) as referenced below. Where a lower ranked alternative is proposed, the Applicant must demonstrate in its Application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.



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- (a) Collocation on existing stealth tower on Town-owned property in a preferred zoning district.
  - (b) Collocation on existing telecommunications tower on Town-owned property in a preferred zoning district.
  - (c) Collocation on existing structures on Town-owned property in a preferred zoning district
  - (d) Collocation on existing telecommunications tower in a preferred zoning district.
  - (e) Attachment of antenna on a current wireless communications facility in a preferred zoning district.
  - (f) New stealth tower in a preferred zoning district.
  - (g) New telecommunications tower in a preferred zoning district.
3. On property owned by the Town, the Town shall authorize the application and use of Town property after the applicant executes a lease agreement acceptable to the Town. The Town shall have no obligation whatsoever to execute such lease even if the applicant can meet the criteria set forth herein.

### **Sec. 3-228. Unmanned Communication Buildings**

- (A) Unmanned communication buildings shall comply with the setback requirements of the zoning district where such buildings are situated.
- (B) An unmanned communication building shall be a permanent structure not to exceed 250 square feet in floor area. More than one (1) unmanned communication building may be permitted on a site; provided, however, that the total square footage of such buildings, added together, does not exceed 750 square feet. If the site contains more than one (1) building, the required distance separation between the buildings may be excused.

### **Sec. 3-229. Standards for Telecommunications Towers**

- (A) Except where a variance is granted, every telecommunications tower must meet the following minimum standards:
- (B) The height of a telecommunications tower shall not exceed 100 feet. Tower height shall be measured from the crown of the road of the nearest public street.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (C) All telecommunication towers shall be designed and constructed with the capability of supporting a minimum of two (2) collocation connections. At a minimum, self-support/lattice or guyed towers shall be able to accommodate three (3) users.
- (D) Telecommunication towers or antennas shall be approved by the Federal Aviation Administration (FAA), Miami-Dade County Aviation Authority or other appropriate agency prior to issuance of a building permit by the Town. Prior to the issuance of a building permit by the building division and/or Community Development Director, the applicant shall provide evidence that the telecommunication towers or antennas are in compliance with FAA regulations. Where an antenna will not exceed the highest point of the existing structure upon which it is to be mounted, such evidence shall not be required.
- (E) All proposed telecommunication towers shall comply with current radio frequency emissions standards of the Federal Communications Commission.
- (F) All telecommunication tower sites must comply with the landscaping requirements of the Town in force at the time the application for a telecommunication tower site plan application is submitted to the Town. An eight (8) foot fence or wall constructed in accordance with these Land Development Regulations, as measured from the finished grade of the site, shall be required around the base of any tower and may be required around any accessory building or structures.
- (G) Landscaping, consistent with the requirements of these Land Development Regulations, as amended, shall be installed around the entire perimeter of the fence or wall, encircling the leased premises on which said telecommunication tower shall be placed. Additional landscaping may be required around the perimeter of the fence or wall and around any or all anchors or supports if deemed necessary to buffer adjacent properties. The Town Council, upon site plan review, may require landscaping in excess of the above requirements as is deemed reasonably necessary in order to enhance compatibility with adjacent residential and nonresidential land uses. Landscaping shall be installed on the outside of the perimeter wall.
- (H) Landscaping, consistent with the requirements of the Town Code, as amended, shall be installed around any accessory buildings or structures. In addition to the Town's landscaping requirements, at a minimum the following landscaping shall be provided: (i) A row of shade trees at least eight (8) feet in height, at a maximum distance of ten (10) feet apart, shall be planted around the perimeter of the fence;

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- (ii) A continuous hedge at least thirty (30) inches in height at planting and capable of growing to a height of thirty-six (36) inches within eighteen (18) months shall be planted on the outside of the perimeter of the fence and tree line; (iii) All landscaping shall be properly maintained to insure good health and viability; and (iv) In locations where the impact of the wireless communications facility would be minimal, the Community Development Director may waive or reduce the landscaping requirements.
- (I) Telecommunication towers shall only be located on leased premises larger than 2,500 square feet.
- (J) Warning signs for high voltage and trespassing.
  - 1. No signs, including commercial advertising, logo, political signs, flyers, flags, or banners, but excluding warning signs, shall be allowed on any part of an antenna or tower. Any signs placed in violation of this section shall be removed immediately at the facility owner's expense.
  - 2. If high voltage is necessary for the operation of the telecommunication tower, associated equipment, or backhaul network or any accessory structures, "HIGH VOLTAGE---DANGER" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.
  - 3. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.
  - 4. The height of the lettering of the warning signs shall be at least twelve (12) inches in height. The warning signs shall be installed at least five (5) feet above the finished grade.
  - 5. The warning signs may be attached to freestanding poles if the content of the sign may be obstructed by landscaping.
- (K) Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of the telecommunication tower, unless repairs to the tower are being made.
- (L) The minimum setbacks shall conform to the zoning districts where the towers are situated. The Community Development Director may administratively reduce the

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minimum setbacks required in the paragraph above, depending on the type of tower to be used, i.e., a monopole tower versus a guyed tower.

- (M) All telecommunication towers shall be located no closer than 100 percent of the height of the tower from residential areas or districts, as measured on a straight line from the two (2) closest points between the nearest residential zoning district line and the nearest point of the proposed tower structure.
- (N) The minimum distance separation between an existing tower and a proposed tower shall be no less than one mile. When a stealth/camouflaged facility or tower is proposed to be used by the applicant, or an existing tower or structure that serves another purpose, then in that event, the Community Development Director may administratively approve a reduction to the minimum separation requirements by not greater than 50 percent of the minimum separation, providing that the proper landscaping and/or buffering is approved by the Director.
- (O) All buildings and other structures to be located on the same property as a telecommunications tower shall conform to the setbacks established for the underlying zoning district.
- (P) Any requests which deviate from the aforementioned regulations shall be subject to an administrative variance.
- (Q) Each application for a wireless communications facility may be required to include written approval or a statement of no objection from other state agencies that may regulate wireless communications facility siting, design, and construction.
- (R) Removal of abandoned or unused facilities. A provider who has determined to discontinue its operations or part of its operations in the Town must either:
  - 1. Remove its own facilities.
  - 2. Provide information satisfactory to the director that the provider's obligations for its equipment in the public Right-of-Way or public easement or private property under this division have been lawfully assumed by another provider; or
  - 3. Submit to the Community Development Director a proposal and instruments for transferring ownership of its equipment to the Town. If a provider proceeds under this clause, the Town may, at its option:

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- a. Assume ownership of the equipment with a ten (\$10.00) dollar nominal consideration, or
  - b. Require the provider, at its own expense, to remove it, or
  - c. Require the provider to post a bond in an amount sufficient to reimburse the Town for reasonably anticipated costs to be incurred in removing the equipment. Equipment of a provider who fails to comply with the preceding paragraph and which, for twelve (12) months, remains unused shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The Town may exercise any remedies or rights it has at law or in equity, including, but not limited to (i) abating the nuisance, (ii) taking possession of the equipment and restoring it to a useable condition, or (iii) requiring removal of the equipment by the provider or by the provider's surety under the bond required by the *indemnification, insurance and security funds* section herein. Telecommunication towers being utilized for other purposes, including but not limited to light standards and power poles, may be exempt from this provision.
- (S) The use of any portion of a tower for signs or advertising purposes including company name, banners, streamers, etc., shall be strictly prohibited.
- (T) All accessory buildings or structures shall meet all building design standards as listed in these Land Development Regulations, and in accordance with the provisions of the Florida Building Code. All accessory buildings or structures shall require a building permit issued by the building division and/or Community Development Director.
- (U) Except where superseded by the requirements of other county, state, or federal regulatory agencies possessing jurisdiction over such facilities, telecommunications towers shall be painted or constructed in neutral colors, designed to blend into the surrounding environment such as non-contrasting gray, earth tones of appropriate shades of green, or such other colors as determined to be appropriate for each site by the Community Development Director.

### **Sec. 3-230. Standards for Antennas**

- (A) Antennas on rooftops or building mounted shall be permitted as an accessory use in all preferred zoning districts except in the residential zoning districts, subject to the procedure and requirements provided elsewhere in this Article, as follows:

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1. No commercial advertising shall be allowed on an antenna;
  2. No signals, lights, or illumination shall be permitted on an antenna, unless required by the FCC or the FAA;
  3. Any related unmanned equipment building shall not contain more than 250 square feet of gross floor area or be more than ten (10) feet in height;
  4. If the equipment building is located on the roof of the building, the area of the equipment building shall not occupy more than 25 percent of the roof area;
  5. Antennas, and related equipment buildings, shall be set back a minimum of twenty (20) feet from the edge of the building or rooftop, located or screened to minimize the visual impact of the antenna upon adjacent properties and shall be of a material or color which matches the exterior of the building or structure upon which it is situated; and
  6. Antennas shall only be permitted on buildings which are at least fifty (50) feet tall. Antennas may be placed on buildings less than fifty (50) feet tall if the Community Development Director determines that public safety needs warrant the antenna.
- (B) Building rooftop stealth antennas may not extend more than twenty (20) feet above highest point of a roof. Stealth antennas attached to but not above rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof if the Community Development Director determines that public safety needs warrant additional height.
- (C) Building rooftop non-stealth antennas may not extend more than ten (10) feet above highest point of a roof. Stealth antennas attached to, but not above rooftop structures shall be exempt from this provision. Antennas may exceed twenty (20) feet above the roof if the Community Development Director determines that public safety needs warrant additional height.
- (D) To minimize adverse visual impacts, stealth antenna types shall be preferred. If a non-stealth antenna is proposed, the applicant shall be required to demonstrate, in a technical manner acceptable to the Community Development Director, why the stealth antenna (i.e. an antenna incorporated into the architecture of the building

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or fully screened from view from sight proximate to the antenna) cannot be used for the particular application. This does not preclude a combination of the various types of antenna.

- (E) Antenna dimensions shall be reviewed by the Community Development Director as required by existing technology. A statement shall be submitted, prepared by a professional registered engineer licensed to practice in the state, and competent to evaluate antenna choices, to certify the need for the required dimensions.
  - 1. Whip (omni-directional) antennas and their supports must not exceed fifteen (15) feet in height and three (3) inches in diameter and must be constructed of a material or color which matches the exterior of the building.
  - 2. Microwave dish antennas located below sixty-five (65) feet above the ground may not exceed six (6) feet in diameter, and when located sixty-five (65) feet or higher above the ground may not exceed eight (8) feet in diameter. Ground-mounted dish antennas must be located or screened so as not to be visible from abutting public streets or adjacent properties.
  - 3. No more than five (5) dish antennas shall be installed on a monopole tower.
- (F) Prior to the issuance of a building permit by the building division and/or Community Development Director, the applicant shall provide evidence that the telecommunications towers or antennas are in compliance with FAA regulations. Where an antenna will not exceed the highest point of the existing structure upon which it is to be mounted, such evidence shall not be required.
- (G) The location of a new antenna in any zoning district other than the preferred zoning districts specified in this Article shall be prohibited unless approved as a Conditional Use at a public hearing by the Town Council.

### **Sec. 3-231. Use of Public Rights-of-Way**

- (A) No telecommunications towers or equipment facilities may be installed or placed in public right of way with the exception that antennas and its associated equipment facility may be placed on any pole that has been already installed or placed in the right of way, with the consent of the pole owner, subject to the standards in this section.

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### (B) Development Standards.

1. Any antenna to be installed in the right of way, and its accompanying equipment facilities, shall be subject to all site plan review and permitting requirements of the Town. No more than one service provider may locate antennas on a single pole.
2. When installing an antenna on a pole, any and all associated equipment shall not be placed on the ground in the right of way, and shall be placed in any of the following areas:
  - (a) Underground in the right of way;
  - (b) On an adjacent property, with the consent of the property owner, provided that all the wiring is underground; or
  - (c) On the pole itself.
3. Before installing any antenna on any pole already installed in the right of way an applicant must complete the antenna application pursuant to this Article and must also comply with the other applicable sections of this Article. An application pursuant to this section shall not be deemed a collocation application.
4. No antenna may be installed under this section until the applicant fully complies with all the indemnification and insurance requirements of this Article.
5. An antenna may be mounted on an existing pole, with the consent of the pole owner, provided the height of the antenna does not extend more than ten (10) feet above the top of such pole. An existing pole may be modified, replaced or rebuilt to accommodate an antenna so long as the height of such pole is not increased by more than ten (10) feet from its existing height.

### **Sec. 3-232. Replacement or Modification of a Wireless Communications Facility**

- (A) A telecommunications tower that is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same telecommunications tower type as the existing tower, unless the Town allows reconstruction as a monopole pursuant to this section.



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- (B) An existing telecommunications tower may be modified or rebuilt to a taller height to accommodate an additional antenna. Such modification or rebuild of the tower shall require the approval of the Town Council. The new height shall comply with the requirements of this Article.
- (C) A telecommunications tower that is being rebuilt to accommodate an additional antenna and which requires movement onsite from its existing location shall require the applicant to submit an application for a new tower. After the telecommunications tower is rebuilt to accommodate collocation, only one telecommunications tower may remain on the site. A relocated onsite telecommunications tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to this section. The relocation of a telecommunications tower pursuant to this section shall not be deemed to cause a violation of the separation requirements contained herein.
- (D) Minor modification of a wireless communications facility shall not require an additional approval so long as the modification does not change the height of the telecommunications tower, enlarge the antenna array, enlarge the equipment facility and does not involve any collocation. All other modifications shall require approval.
- (E) A pre-existing tower, including a nonconforming tower, may be structurally modified to permit collocation or may be replaced through no more than an administrative review and building permit review, and is not subject to a public hearing, provided the overall height of the tower is not increased. In the case of a replacement where the replacement tower is a monopole tower or, if the pre-existing tower is a stealth tower, the replacement tower is a like-stealth tower.
- (F) Legal nonconforming telecommunications towers or antennas that are damaged or destroyed may be rebuilt subject to Section 3.11(G). Building permits to rebuild the facility shall comply with the then applicable Building Codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if the permit expires, the telecommunications tower or antenna shall be deemed abandoned as specified in this Article.

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## **Sec. 3-233. Indemnification, Insurance and Security Funds**

- (A) The Town shall not enter into any lease agreement for Town owned property until and unless the Town obtains an adequate indemnity from such provider. The indemnity must at least:
1. Release the Town from and against any and all liability and responsibility in or arising out of the construction, operation or repair of the wireless communications facility.
  2. Indemnify and hold harmless the Town, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the Town or any third party arising out of, or by reason of, or resulting from or of each wireless communications facility operator, or its agents, employees, or servants negligent acts, errors, or omissions.
  3. Provide that the covenants and representations relating to the indemnification provision shall survive following the term of any agreement and continue in full force and effect for at least one year following the termination of the party's agreement as to the party's responsibility to indemnify.
  4. In no event shall the Town indemnify a service provider and/or the owner or operator of a wireless communications facility.
- (B) The Town shall not grant or approve an application for the installation of a tower, antenna and/or wireless communications facility and shall not enter into any lease agreement for Town owned property until and unless the Town obtains assurance that such applicant or lessee (and those acting on its behalf) have adequate insurance. At a minimum, the following requirements must be satisfied:
1. A wireless communications facility owner shall not commence construction or operation of the facility without obtaining all insurance required under this Section and approval of such insurance by the Town Manager, nor shall a wireless communications facility operator allow any contractor or subcontractor to commence work on its contract or sub-contract until all similar such insurance required of the same has been

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obtained and approved. The required insurance must be obtained and maintained for the entire period the wireless communications facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the Town may order such entities to stop operations until the insurance is obtained and approved.

2. Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the Town. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.
  3. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the Town. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Town may amend its requirements pertaining to insurance from time to time and may require additional provisions pertaining to such insurance in a lease.
  4. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the lease agreement with the Town, then in that event, the wireless communications facility operator shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period.
- (C) A wireless communications facility operator and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain adequate insurance to cover liability, bodily injury and property damage in the amount to be determined by the Town at the time of application. Exposures to be covered include premises, operations, and those certain contracts relating to the construction, installation or maintenance of the wireless communications facility. Coverage shall be written on an occurrence basis. Certificates of insurance reflecting evidence of the required insurance shall be filed with the Town.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

- (D) Prior to any construction, every service provider, whether on public or private property within the Town, shall establish a cash security fund, or provide the Town with an irrevocable letter of credit subject to the Town Attorney's approval, in the amount specified in an agreement, permit, or other authorization as necessary to ensure the provider's faithful performance of construction and compliance with this Article. The minimum amount of the security fund for each telecommunications tower shall be \$25,000 and the minimum amount for each antenna shall be \$5,000.
- (E) In the alternative, at the Town's discretion, a service provider may, in lieu of a cash security fund or letter of credit, file and maintain with the Town a bond in the same amounts as required in subsection A. The provider and the surety shall be jointly and severally liable under the terms of the bond. The bond shall be issued by a surety having a minimum rating of A-I in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney; and shall provide that: "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
- (F) The rights reserved by the Town with respect to any security fund or bond established pursuant to this section are in addition to all other rights and remedies the Town may have under this Article, a lease, or at Law or equity.
- (G) Any person, firm or corporation who knowingly breaches any provision of this Article shall upon receipt of written notice from the Town be given a time schedule to cure the violation. Failure to commence to cure the violation within thirty (30) days and to complete cure, to the Town's satisfaction, within sixty (60) days, or such longer time as the Town may specify, shall result in revocation of any permit or license and the Town shall seek any remedy or damages to the full extent of the law. This shall not preclude other penalties allowed by law.
- (H) In addition to revoking any permit or license for violation of this Article, the Town may enforce this Article pursuant to the Local Government Code Enforcement Act, Chapter 162, Florida Statutes, as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction

## **Article XV**

### **CONCURRENCY**

#### **Sec. 3-240. Application for Concurrency**

Concurrency refers to a finding that public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impacts of development. Facilities and services subject to these regulations include: transportation facilities (roadways and transit), potable water service, sanitary sewage service, stormwater drainage facilities, solid waste removal service, educational facilities and park facilities. All applications for development orders shall be subject to concurrency review unless specifically exempted.

All development applications shall demonstrate consistency with the Growth Management Plan as well as with all applicable provisions of this code. Further, development applications, if applicable, shall demonstrate that specified concurrency facilities shall be available at prescribed levels of service concurrent with the impact of the development of those facilities. A development order shall be permitted only if the final development plan complies with the goals, objectives and policies established in the Growth Management Plan.

The Department shall verify concurrency based upon maintaining the level of service for the public facilities and services, subject to these regulations, as adopted and as may be amended in the Growth Management Plan.

#### **Sec. 3-241. Applicability and Exemptions**

In no case shall a development order be issued for a minimum threshold (de minimis) or exempted project which would impact a facility subject to these regulations for which a moratorium or deferral on development has been placed.

(A) Projects below the minimum threshold (de minimis). The following development shall be exempt from concurrency review:

1. Residential projects which would result in the creation of a single-family dwelling or one two-family dwelling, as well as projects that entail structural alterations, including room additions to single-family structures, which do not change the land use.
2. Any development which does not create additional public facility demands.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

3. In the case of transportation facilities, the cumulative total of the de minimis impacts, from both improved and vacant properties, shall not exceed 3 percent of the maximum volume at the adopted level of service standard of the affected transportation facility.
  4. Actions administered through development orders and other development which do not increase demand on facilities subject to these regulations, such as grading or land excavation or structural alterations which do not include a change of use and satisfy provisions of land 2 above.
- (B) Vested developments. Projects that have valid final development orders or unexpired concurrency reservations pursuant to a plat or building permit issued prior to June 20, 2012.
- (C) Redevelopment projects. Proposed redevelopment shall be credited for the existing demand on available capacity. If a redevelopment project generates in excess of the existing demand which it is replacing, a concurrency review shall be required; however, the concurrency review shall only address the amount by which the proposed demand generated exceeds the demand of existing development. The development plan for redevelopment must be submitted no more than one year after the prior use is discontinued in order to qualify for a concurrency credit. If the proposed redevelopment generates equal or less demand than the existing project, the applicant shall be given a concurrency credit enabling the applicant to reserve the unused capacity.
- (D) Town public facilities. Town public facilities which are to ensure the protection of the health, safety and general welfare of the citizens shall be exempt from concurrency review. This shall include all public facility construction projects included in the Town capital improvements program required to meet any adopted level of service standard.

### **Sec. 3-242. Concurrency Management System (CMS) Criteria for Review**

The Concurrency Management System (CMS) is intended to provide criteria and a systematic process for the review and evaluation of all proposed development for its impact on concurrency facilities and services, as provided by Chapter 163, Part II, Florida Statutes. The CMS criteria and process are as follows:

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

## CONCURRENCY MANAGEMENT SYSTEM

<b>Sanitary Sewer, Solid Waste, Drainage and Potable Water</b>
<ol style="list-style-type: none"><li>1. A development order or permit is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the new development; or</li><li>2. At the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to Section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S., to be in place and available to serve new development at the time of the issuance of a certificate of occupancy or its functional equivalent. [Section 163.3180(2)(a), F.S.]</li></ol>
<b>Recreation and Open Space</b>
<ol style="list-style-type: none"><li>1. At the time the development order or permit is issued, the necessary facilities and services are in place or under actual construction; or</li><li>2. A development order or permit is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the new development is dedicated or acquired by the local government, or funds in the amount of the developer's fair share are committed; and<ol style="list-style-type: none"><li>a. A development order or permit is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent as provided in the adopted local government 5-year schedule of capital improvements; or</li><li>b. At the time the development order or permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent; or</li><li>c. At the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to Section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S., to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent. [Section 163.3180(2)(b), F.S.]</li></ol></li></ol>
<b>Transportation Facilities (Roadways and Mass Transit)</b>
<ol style="list-style-type: none"><li>1. At the time a development order or permit is issued, the necessary facilities and services are in place or under construction; or</li><li>2. A development order or permit is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than three years after issuance of a certificate of occupancy or its functional equivalent as provided in the adopted local government five-year schedule of capital improvements. The schedule of capital improvements may recognize and include transportation projects included in the first three years of the applicable, adopted Florida</li></ol>

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

Department of Transportation five year work program. The Capital Improvements Element must include the following policies:

- a. The estimated date of commencement of actual construction and the estimated date of project completion.
  - b. A provision that a plan amendment is required to eliminate, defer, or delay construction of any road or mass transit facility or service which is needed to maintain the adopted level of service standard and which is listed in the five-year schedule of capital improvements; or
3. At the time a development order or permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction no more than three years after the issuance of a certificate of occupancy or its functional equivalent; or
  4. At the time a development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to Section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S., to be in place or under actual construction not more than three years after issuance of a certificate of occupancy or its functional equivalent. [Section 163.3180(2)(c), F.S.]
  5. For the purpose of issuing a development order or permit, a proposed urban redevelopment project located within a defined and mapped Existing Urban Service Area as established in the local government comprehensive plan pursuant to Section 163.3164(29), F.S., shall not be subject to the concurrency requirements of subparagraphs 9J-5.0055(3)(c)1.-4., F.A.C., of this chapter for up to 110 percent of the transportation impact generated by the previously existing development. For the purposes of this provision, a previously existing development is the actual previous built use which was occupied and active within a time period established in the local government comprehensive plan. [Section 163.3180(8), F.S.]
  6. For the purpose of issuing a development order or permit, a proposed development may be deemed to have a de minimis impact and may not be subject to the concurrency requirements of subparagraphs 9J-5.0055(3)(c)1.-4., F.A.C., only if all of the conditions specified in subsection 163.3180(6), F.S., are met. [Section 163.3180(6), F.S.]
  7. A development order or permit within a designated multimodal transportation district may be issued provided the planned community design capital improvements are included in a financially feasible long range schedule of improvements for the development or redevelopment time-frame for the district, without regard to the period of time between development or redevelopment and the scheduled construction of the capital improvements as specified in Section 163.3180(15)(c), F.S.

### **Educational Facilities**

1. For district-wide concurrency service areas:
  - a. At the time the residential site plan or plat is issued, the necessary facilities and services are in place or under construction; or
  - b. A residential development order or permit is issued subject to the conditions that the necessary facilities and services needed to serve the new development are scheduled to be in place or under construction not more than 3 years after permit issuance as provided in the adopted public school facilities



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

program.

2. For less than district-wide concurrency service areas: If public school concurrency is applied on less than a district-wide basis in the form of concurrency service areas, a residential development order or permit shall be issued only if the needed capacity for the particular service area is available in one or more contiguous service areas and school capacity is available district-wide as defined in Section 163.3180(13)(e), F.S.

### **Sec. 3-243. Concurrency Administration**

The Department shall be responsible for concurrency reviews as required by this concurrency management system. The Department in conjunction with other Town staff shall determine whether adequate capacities for concurrency facilities are available to satisfy the demands of each proposed development.

- (A) Application for concurrency review. Concurrency review shall be initiated upon submission and acceptance of an application for a development plan approval, preliminary subdivision plat, or a building permit, whichever occurs first.
- (B) Project impact assessment. The Department shall use the best available information to establish and evaluate existing capacities for concurrency facilities. The applicant shall be responsible for supplying the anticipated land uses, densities and/or intensities, of a proposed development and the anticipated date of completion of proposed development. The Department shall assess the anticipated impacts of the proposed development on concurrency facilities.
- (C) Project phasing/timing of improvements. Concurrency facilities associated with a phased development may also be phased. However, all concurrency facilities necessary to accommodate the impacts of each phase must be available or a schedule for the acquired improvements must be approved prior to the issuance of a development order. The schedule of facility improvements shall ensure that all facility improvements necessary to accommodate the impacts of the development (or portion thereof) for which a certificate of occupancy has been applied shall be in place as provided for in Section III above.
- (D) Concurrency review determination. Upon the conclusion of the concurrency review, the Department shall prepare a written determination concerning the proposed development. This determination shall address, but is not limited to:
  1. The anticipated public facility impacts of the proposed development;
  2. The ability of existing facilities to accommodate the proposed development at the adopted level of service standards;

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

3. Any existing facility deficiencies that will need to be corrected prior to the completion of the proposed development;
4. The facility improvements or additions necessary to accommodate the impact of the proposed development at the adopted level of service standards and the entities responsible for the design and installation of all required facility improvements or additions; and
5. The date such facility improvements or additions will need to be completed to be concurrent with the impacts on such facilities created by the proposed development.

(E) Concurrency denials. In the event that the Town concurrency review reveals that the proposed development would generate public facility impacts beyond that which can be absorbed by available capacity, the Town shall determine whether there is a financial or other legally binding commitment to ensure that public facilities necessary to correct the anticipated deficiency will be in place concurrent with the impacts of the proposed development. If the Town and/or a developer are unable to provide such assurances, the project shall be denied.

### **Sec. 3-244. Concurrency Review**

The Department, through review and approval, shall initiate the review to certify that public facilities and services will be available concurrent with the impacts generated by the proposed development as follows:

1. The current available capacity of transportation facilities (roadways and transit), water service, sewage facilities, stormwater drainage, solid waste removal service, educational facilities and park facilities shall be established.
2. The projected impact on each of the public services and facilities listed above will be calculated for the proposed development using the required levels of service contained in Town's adopted Growth Management Plan, and in this section, as may be amended from time to time.
3. The projected impact on each of the public services and facilities shall be subtracted from the current available capacity presented above.
4. Certify that the new capacity of the public facilities and service is not below zero.

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

5. A written statement certifying the availability, or lack of availability, of capacity in each of the public facilities and services shall be provided by the Department prior to the issuance of the site plan, plat or the building permit, whichever is applicable.
6. Upon issuance of a development order or a building permit, the capacity of the public services and facilities needed to meet the demands of the development being approved shall be reserved for a period of one (1) year. The Town may reserve the public service capacities for a period no longer than one (1) year, unless a valid and binding development agreement between the Town and a developer is executed extending the time period.

### **Sec. 3-245. Capacity Reservation**

- (A) Reservation of capacity. After a development order is approved, the capacity demand of said development shall be considered to be reserved. The time frame of the concurrency reservation shall be based on the time frame of the building permit or development agreement. If the time frame of the development order and/or the development agreement lapses, the available capacity assigned to the development order shall be returned to the available capacity pool.
- (B) First-come-first-served. Capacity shall be reserved on a first-come, first-served basis by the Department. Such reservation shall be valid only for the specific final development order and for the specified land uses, densities, intensities, construction and improvement schedules contained in the approved development order. Reservation of capacity runs with the land and is transferable to a successor in ownership. Reservation of capacity for concurrency shall expire if the underlying development order or development agreement expires or is revoked. The development order shall state the terms of the concurrency reservation, including the allocation of available capacity, the time-frame for the allocation, and other appropriate legal assurances.
- (C) Project deferrals/development moratoriums. If at any time the Town inventory of the capacity of concurrency facilities indicates that a concurrency facility has dropped below its adopted level of service standard, the Town shall cease to issue development orders for projects which would impact the deficient facility or the area impacted by the deficient concurrency facility, as defined within this concurrency management system. Such a suspension or moratorium on the

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

issuance of development orders shall continue until such time as the adopted level of service standard is re-established, the Growth Management Plan is amended to reflect an acceptable level of service standard for the facilities in question, or alternative arrangements are made to ensure capacity will be available.

## Sec. 3-246. Concurrency Level of Service Standards

The following criteria shall be applied to determine whether or not sufficient public services and facilities capacity exists.

### **LEVEL OF SERVICE (LOS) STANDARDS**

Road				
Non-FIHS, SIS or TRIP-funded Facilities Minimum Levels of Service within the Town of Cutler Bay				
Location	Facility – Town, County and State Roadways	Transit Availability		
		No Transit Availability	20 min. Headway Transit Service within ½ mile	Extraordinary Transit (Commuter Rail or Express Bus)
Outside Miami-Dade Urban Infill Area	Principal Arterials	LOS D	LOS E (100% of capacity)	120% of capacity
	Minor Arterials	LOS D	LOS E (100% of capacity)	120% of capacity
	Collectors	LOS D	LOS E (100% of capacity)	120% of capacity
	Local Roads	LOS D	LOS E (100% of capacity)	120% of capacity
Statewide Minimum Level of Service Standards for the State Highway System, Roadways on the Strategic Intermodal System (SIS), Roadways on the Florida Intrastate Highway System (FIHS) and Roadway Facilities Funded in accordance with Section 339.2819, Florida Statutes, the Transportation Regional Incentive Program (TRIP) with the Town of Cutler Bay (1)				
SIS and FIHS Facilities	Location			
	Inside Cutler Bay	Roadway Parallel to Exclusive Transit Facilities	Constrained or Backlogged Roadways (3)	
Limited Access Facilities	LOS D (E)	LOS E	Manage	
Controlled Access Facilities	LOS D	LOS E	Manage	
TRIP-funded Facilities and other State Roads (2)	Location			
Other Multilane	LOS D	LOS E	Manage	
Two-lane (3)	LOS D	LOS E	Manage	

(1) Source: Statewide Minimum Level of Service Standards, Rule 14-94.003

(2) Means the level of service standards for non-TRIP facilities may be set by local governments in accordance with Rule 9J-5.0055 F.A.C.

(3) It is recognized that certain roadways (i.e. constrained roadways) will not be expanded by the addition of through lanes for physical, environmental, or policy reasons. In such instances, a variance to the level of service may be sought pursuant to Section 120.542, Florida Statutes.

Note: Level of Service designations are defined in the FDOT 2002 Quality/Level of Service Handbook

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

Other Public Facilities	Level of Service Standard																										
<b>Sanitary Sewer</b>	<ul style="list-style-type: none"> <li>The system shall maintain the capacity to treat 100 gallons/capita/day</li> <li>Discharges shall meet all federal, State and County standards</li> <li>Regional treatment plants shall operate with physical capacity no less than the annual average daily sewage flow</li> <li>The Countywide system shall maintain the capacity to collect and dispose of 102% of the average daily sewage system demand for the preceding 5 years (Miami-Dade County)</li> </ul>																										
<b>Solid Waste</b>	<p>The County shall maintain a solid waste disposal capacity sufficient to accommodate waste flows committed to the system through long-term (20 year) Interlocal Agreements or contracts with anticipated non-committed waste flows for a period of 5 years (Miami-Dade County Resolution 96-30)</p>																										
<b>Drainage</b>	<ul style="list-style-type: none"> <li>The minimum standard for Flood Protection shall be protection from the degree of flooding that would result for the duration of a day from a 10-year storm</li> <li>All structures shall be constructed at, or above, the minimum floor elevation specified in the federal Flood Insurance Rate Maps for Miami-Dade County</li> <li>The water quality standard shall be met when the annual average for each of the listed National Pollutant Discharge Elimination System pollutants does not exceed the following target criteria within a canal basin:</li> </ul> <table border="1" data-bbox="834 1283 1390 1824"> <thead> <tr> <th data-bbox="834 1283 1114 1314">Pollutant</th><th data-bbox="1114 1283 1390 1314">Target Criterion</th></tr> </thead> <tbody> <tr> <td data-bbox="834 1314 1114 1377">Biological Oxygen Demand</td><td data-bbox="1114 1314 1390 1377">9 mg/l</td></tr> <tr> <td data-bbox="834 1377 1114 1440">Chemical Oxygen Demand</td><td data-bbox="1114 1377 1390 1440">65 mg/l</td></tr> <tr> <td data-bbox="834 1440 1114 1472">Total Suspended Solids</td><td data-bbox="1114 1440 1390 1472">40 mg/l</td></tr> <tr> <td data-bbox="834 1472 1114 1503">Total Dissolved Solids</td><td data-bbox="1114 1472 1390 1503">1,000 mg/l</td></tr> <tr> <td data-bbox="834 1503 1114 1598">Total Ammonia-Nitrogen and Organic Ammonia</td><td data-bbox="1114 1503 1390 1598">1.5 mg/l</td></tr> <tr> <td data-bbox="834 1598 1114 1629">Total Nitrate</td><td data-bbox="1114 1598 1390 1629">0.68 mg/l</td></tr> <tr> <td data-bbox="834 1629 1114 1661">Total Phosphate</td><td data-bbox="1114 1629 1390 1661">0.33 mg/l</td></tr> <tr> <td data-bbox="834 1661 1114 1692">Dissolved Phosphate</td><td data-bbox="1114 1661 1390 1692">Not Available</td></tr> <tr> <td data-bbox="834 1692 1114 1724">Cadmium</td><td data-bbox="1114 1692 1390 1724">0.0023 mg/l</td></tr> <tr> <td data-bbox="834 1724 1114 1755">Copper</td><td data-bbox="1114 1724 1390 1755">0.0258 mg/l</td></tr> <tr> <td data-bbox="834 1755 1114 1787">Lead</td><td data-bbox="1114 1755 1390 1787">0.0102 mg/l</td></tr> <tr> <td data-bbox="834 1787 1114 1824">Zinc</td><td data-bbox="1114 1787 1390 1824">0.231 mg/l</td></tr> </tbody> </table>	Pollutant	Target Criterion	Biological Oxygen Demand	9 mg/l	Chemical Oxygen Demand	65 mg/l	Total Suspended Solids	40 mg/l	Total Dissolved Solids	1,000 mg/l	Total Ammonia-Nitrogen and Organic Ammonia	1.5 mg/l	Total Nitrate	0.68 mg/l	Total Phosphate	0.33 mg/l	Dissolved Phosphate	Not Available	Cadmium	0.0023 mg/l	Copper	0.0258 mg/l	Lead	0.0102 mg/l	Zinc	0.231 mg/l
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<b>Potable Water</b>	<ul style="list-style-type: none"> <li>Regional treatment system shall operate with a rated capacity which is no less than</li> </ul>																										

# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

	<p>2% above maximum daily flow for the preceding year and an average daily capacity 2% above the average daily system demand for the preceding 5 years</p> <ul style="list-style-type: none"> <li>The system shall maintain the capacity to serve 155 gallons/capita/day as per the SFWMD Consumptive Use Permit</li> <li>Water shall be delivered at a pressure no less than 20 psi and no greater than 100 psi</li> <li>Minimum fire flow shall be:</li> </ul> <table border="1"> <thead> <tr> <th>Land Use</th><th>Gallons/Minute</th></tr> </thead> <tbody> <tr> <td>Single Family Estate Density</td><td>500</td></tr> <tr> <td>Single Family and Duplex (min. 7,500 sq. ft. lots)</td><td>750</td></tr> <tr> <td>Multi Family, Semiprofessional Offices</td><td>1,500</td></tr> <tr> <td>Hospitals and Schools</td><td>2,000</td></tr> <tr> <td>Business and Industrial</td><td>3,000</td></tr> </tbody> </table> <ul style="list-style-type: none"> <li>Water quality shall meet all federal, State and county primary standards for potable water</li> <li>Countywide storage capacity for finished water shall equal no less than 15% of the Countywide average daily demand (Miami-Dade County)</li> </ul>	Land Use	Gallons/Minute	Single Family Estate Density	500	Single Family and Duplex (min. 7,500 sq. ft. lots)	750	Multi Family, Semiprofessional Offices	1,500	Hospitals and Schools	2,000	Business and Industrial	3,000
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Business and Industrial	3,000												
<b>Parks and Recreation</b>	<ul style="list-style-type: none"> <li>3.0 acres per 1,000 permanent residents</li> <li>Private facilities shall count as 50% towards acreage</li> <li>County Regional Parks shall count as 30% towards acreage</li> </ul>												
<b>Mass Transit</b>	<ul style="list-style-type: none"> <li>In areas with a combined resident and workforce population of 10,000 persons per square mile the minimum peak-hour headways shall be 30 minutes</li> <li>The average route spacing shall be 1 mile</li> </ul>												
<b>Public Educational Facilities</b>	<ul style="list-style-type: none"> <li>The adopted level of service (LOS) standard for all Miami-Dade County public schools is 100 percent utilization of Florida Inventory of School Houses (FISH) capacity (With Relocatable Classrooms). This LOS standard, except for magnet schools, shall be applicable in each public school concurrency service area (CSA), defined as the public school attendance boundary established by Miami-Dade County Public Schools.</li> <li>The adopted LOS standard for magnet schools is 100 percent FISH (With Relocatable Classrooms) which shall be calculated on a district wide basis.</li> </ul>												

## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

	<ul style="list-style-type: none"><li>• Level of service standards for public school facilities shall apply to those traditional educational facilities, owned and operated by Miami-Dade County Public Schools that are required to serve the residential development within their established Concurrency Service Area. Level of service standards do not apply to magnet schools, charter schools and other educational facilities that may have district wide attendance boundaries; however, their capacity is credited against the impact of development. No credit against the impact of development shall be given for such district wide educational facilities if their enrollment is at, or above, 100 percent FISH capacity (With Relocatable Classrooms).</li><li>• In the event the adopted LOS standard of a CSA cannot be met as a result of a proposed development's impact, the development may proceed provided at least one of the following conditions is met:<ul style="list-style-type: none"><li>a) The development's impact can be shifted to one or more contiguous CSAs that have available capacity and is located, either in whole or in part, within the same Geographic Area as the proposed development: or</li><li>b) The development's impact is mitigated, proportionate to the demand for public schools it created, through a combination of one or more appropriate proportionate share mitigation options, as defined in Section 163.3180 (13)(e)1, Florida Statutes. The intent of these options is to provide for the mitigation of residential development impacts on public school facilities, guaranteed by a legal binding agreement, through mechanisms that include one or more of the following:<ul style="list-style-type: none"><li>1) contribution of land: 2) the construction, expansion or payment for land acquisition or construction of a permanent public school facility: or, 3) the creation of a mitigation bank based on the construction of a permanent public school facility in exchange for the right to sell capacity credits. The proportionate share mitigation agreement is subject to approval by Miami-Dade County School Board and the Town and must be identified in the</li></ul></li></ul></li></ul>
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# TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

	<p>Miami-Dade County Public School Facilities Work Program, or;</p> <p>c) The development's impacts are phased to occur when sufficient capacity will be available.</p> <p>If none of the above conditions is met, the development shall not be approved.</p> <ul style="list-style-type: none"> <li>• Exemptions and Vested Development: The Town shall determine whether a development is exempt or vested.</li> </ul> <p>The following types of developments shall be exempt from the requirements of public school concurrency:</p> <ol style="list-style-type: none"> <li>a) Developments that result in a total impact of less than one (1) student in any level or type of school; and</li> <li>b) Development with covenants restricting occupancy to exclude school age children (e.g., 55 and over).</li> </ol> <p>The following types of developments shall be considered vested from the requirements of public school concurrency:</p> <ol style="list-style-type: none"> <li>a) Developments with a valid, unexpired site plan or final plat or functional equivalent, as of December 31, 2007;</li> <li>b) Developments that have executed and recorded covenants or have provided monetary mitigation payments, as of December 31, 2007, under the School Board's current voluntary mitigation procedures;</li> <li>c) Any Development of Regional Impact for which a development order was issued, pursuant to Chapter 380, Florida Statutes, prior to July 1, 2005. Also, any Development of Regional Impact for which an application was submitted prior to May 1, 2005.</li> </ol>
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## **Sec. 3-247. Capital Improvements Schedule Review**

In order to ensure that proposed capital improvement projects are being planned to meet the concurrency requirements outlined in the Section, the Department shall draft and review the Town's 5-Year Capital Improvement Schedule [CIS]. Following the drafting of



## TOWN OF CUTLER BAY - ADOPTED LAND DEVELOPMENT REGULATIONS

the CIS, the Department shall forward it to the Town's Local Planning Agency and the Town Council for their review and consideration.

## DEFINITIONS

### Sec. 3-250. Purpose

Words and terms used in this code shall be given the meanings set forth in this section. All words and terms not specifically defined in this section shall be given their common, ordinary meanings, as the context may reasonably suggest.

### Sec. 3-251. Definitions

#### A

##### **Abandonment/Abandoned**

To cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure. An “intent to resume” can be shown through continuous operation of a portion of the facility, maintenance of sewer, water, and other public utilities, or other outside proof of continuance such as bills of lading, delivery records, etc.

##### **Abut**

To physically touch, or having property or district lines in common.

##### **Access**

A means of ingress and egress to a lot from either a public street, alley or private way.

##### **Accessory building, structure or use**

A subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and subordinate to that of the principal structure. Where there is no principal structure on the lot, the accessory structure shall be considered as a principal structure for the purpose of the height, area and bulk regulations.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

These accessory buildings or structures may include but are not limited to the following: generators, piers, docks, pools, whirlpool spas, courts, cabanas, chickee huts, gazeboes, stables, sheds, detached garages and carports, antennas and wireless telecommunications facilities.

### **Adjacent property**

Property that touches or is directly across a street, private street or access easement, or right-of-way (other than a freeway or principal arterial) from the subject property.

### **Administrative adjustment**

An administrative adjustment from the strict application of the Land Development Regulations but only in accordance with certain procedures, regulations and requirements.

### **Adult use or adult business definitions**

#### **Adult book store/Adult novelty store/Adult video store**

An establishment having adult material as a substantial or significant portion of its stock in trade, or an establishment with a segment or section devoted to the sale or display of such material. Twenty (20) percent of the gross floor area of the establishment devoted to adult material shall be presumed to be a substantial or significant portion of the stock in trade.

#### **Adult booth**

A small enclosed or partitioned area inside an adult entertainment establishment that is:

- (1) Designed or used for the viewing of adult material by one (1) or more persons; and
- (2) Accessible to all persons, regardless of whether a fee is charged for access.

The term "adult booth" includes but is not limited to a "peep show" booth, or other booth used to view "adult material." The term "adult booth" does not include a foyer through which a person can enter or exit the establishment, or a rest room.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Adult dancing establishment**

An establishment where employees display or expose specified anatomical areas to others, regardless of whether the employees actually engage in dancing.

## **Adult domination/submission parlor**

An adult establishment specializing in bondage, sadomasochism, humiliating activities or other similar activities which depicts, describes or relates to the "specified sexual activities" or "specified anatomical areas," as defined below.

## **Adult entertainment establishment**

- (1) The regulated adult use or other establishment or business operated for commercial gain where an employee, operator, or owner exposes his or her specified anatomical area for viewing by patrons, including but not limited to massage establishments, whether or not licensed pursuant to F.S. Ch. 480, tanning salons, modeling studios, or lingerie studios.
- (2) Excluded from this definition are educational institutions and schools, as defined herein, where the exposure of specified anatomical areas is associated with a curriculum or program.

## **Adult material**

One (1) or more of the following, regardless of whether it is new or used:

- (1) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, video cassettes, slides or other visual representations; recordings or other audio materials; and anatomically correct novelties or devices that have, as their primary or dominant theme, subject matter depicting, exhibiting, illustrating, describing, or relating to specified sexual activities or specified anatomical areas as defined below; or
- (2) Anatomically correct instruments, novelties, devices, or paraphernalia which are designed for use in connection with specified sexual activities, excluding bona fide birth control devices.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Adult motel**

A hotel, motel, boarding house or rooming house or other place of temporary lodging presenting adult material by means of closed circuit television, for observation by patrons therein.

## **Adult motion picture theater**

An enclosed building with a capacity of fifty (50) or more persons regularly used for presenting adult material for observation by patrons therein, which activity requires the exclusion of minors under F.S. Ch. 847.

## **Encounter studio/modeling studio**

An establishment offering nude or semi-nude encounter/modeling sessions, sessions between opposite or same sex adult individuals, nude dance/photo sessions, or sexual consultations, which have as their dominant or primary theme matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below.

## **Establishment**

The site or premises on which the adult entertainment establishment is located, including the interior of the establishment, or portion thereof, upon which certain activities or operations are being conducted for commercial gain.

## **Licensed premises**

See "establishment."

## **Massage establishment**

Any place of business or establishment wherein all or any one (1) or more of the following names, subjects and methods of treatment are administered or practiced: Body massage either by hand or by any mechanical or electrical apparatus or device (excluding fever therapy), applying such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage, or tapotement. However, nothing in this article shall be construed as applying to State of Florida licensed massage therapists, barbers, cosmetologists, manicurists, pedicurists, occupational therapists, physical therapists, midwives, practical nurses, agents, servants or employees in licensed hospitals, nursing homes or other licensed medical institutions, physicians, osteopaths, chiropractors, podiatrists, naturopathic physicians or other

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licensed medical practitioners, or their agents, servants or employees acting in the course of such agency, service or employment under the supervision of the licensee. Also, the term "massage establishment" shall not apply to any massage establishment wherein at least fifty (50) percent of the employees on duty full time during the hours that the establishment is open for business are State of Florida licensed massage therapists or other licensed professionals listed in the preceding sentence.

### **Nude entertainment establishment**

Any establishment which does or does not offer alcoholic beverages for sale or consumption but does feature male or female entertainers, performing partially clothed or completely nude, displayed in a setting, section, stage or cubicle within a business, which has as its principal or incidental purpose the offering for viewing to adult of performances which have as their dominant or primary theme matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined.

### **Outdoor adult theater**

An adult theater that is not located within an enclosed building.

### **Regulated adult use**

Includes, but is not limited to, the following:

- (1) Adult bookstore/ adult novelty store/adult video store;
- (2) Adult dancing establishment;
- (3) Adult domination/submission parlor;
- (4) Adult motel;
- (5) Adult motion picture theater/Adult booth;
- (6) Encounter studio/modeling studio;
- (7) Massage establishment;

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- (8) Nude entertainment establishment;
- (9) Outdoor adult theater; and
- (10) Any bookstore, video store, motion picture theater, motel/hotel, dancing establishment, massage establishment, or photo or modeling studio (a) that includes the word “adult” in its name; or (b) where an employee, operator, or owner exposes his or her specified anatomical area for viewing by patrons; or (c) that requires the exclusion of minors under F.S. Ch. 847, shall be considered a regulated use.

### **Specified anatomical areas**

Is defined as:

- (1) Less than completely and opaquely covered:
  - a. Human genitals and pubic region; or
  - b. Cleavage of the human buttocks; or
  - c. That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola, including the areola; this definition shall include the entire lower portion of the human female breast, but shall not include a portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

### **Specified sexual activities**

Shall be defined as:

- (1) Human genitals in a state of sexual stimulation, arousal, or tumescence; or

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- (2) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast; or
- (4) Excretory functions as part of or in connection with the activities set forth in subsections (1)--(3).

### **Adult congregate living facility**

Any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

### **Adult group home**

A nursing home facility, adult congregate living facility or adult family-care home facility licensed pursuant to Chapter 400 of the Florida Statutes, Parts II, III and VII, respectively.

### **Alley**

A through right-of-way (public or private), of less than 25 feet in width, that offers only secondary access to abutting properties which is not used for general traffic.

### **Alterations**

Any change in the size, shape or character of construction of a building, structure or sign. Superficial enhancement of the exterior of an existing building for the purpose of beautifying and modernizing shall not be considered a structural alteration.

### **Amateur radio station**

Is a station in an amateur radio service consisting of the apparatus necessary for carrying on radiocommunications. Radio amateurs build and operate several types of amateur radio stations, including fixed ground stations, mobile stations, space stations, and temporary field stations.



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### **Amateur radio tower**

Is a freestanding or building mounted structure, including any base, tower or pole, antenna, and appurtenances, intended for airway communication purposes by a person holding a valid amateur radio (HAM) license issued by the Federal Communications Commission (FCC).

### **Antenna array**

One or more rods, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include an omni-directional antenna (rod), a directional antenna (panel), and a parabolic antenna (disc).

### **Apartment**

A building with or without resident supervision occupied or intended to be occupied by more than two families living separately with separate cooking and sleeping facilities in each unit.

### **Arcade**

A walkway adjacent to a building, covered by a roof, yet not fully enclosed.

### **Assembly**

A group of persons organized and united for some common purpose.

### **Attic**

The area between roof framing and the ceiling of the rooms below that is not habitable, but may be reached by ladder and used for storage of mechanical equipment. enclosed with walls, flooring, and a ceiling creates finished attic space eligible for status as a story.

## **B**

### **Balcony**

A platform enclosed by a parapet or railing that projects from the wall of a building and is not within the general outline or profile of the building.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Bar**

An area devoted primarily to the selling or dispensing of alcoholic beverages or any place where any sign is exhibited or displayed indicating that alcoholic beverages are obtainable within or thereon and where such beverages are consumed on the premises and in which the service of food is only incidental to the consumption of such beverages.

## **Block**

A parcel of land entirely surrounded by streets, streams, railroad rights-of-way, parks or other public space or combinations thereof.

## **Boat**

A vessel for travel on water. The following shall be exempt from the term “boat”:

- a) non-motor-powered vessels;
- b) non-motor-powered vessels used exclusively on private lakes and ponds;
- c) vessels owned by the United States Government; and
- d) vessels used exclusively as ship’s lifeboat.

## **Boundary**

A line indicating the bounds or limits of any tract or parcel of land, or the various use districts of an urban area.

## **Buffer area (see also screening)**

A landscaped area or green space intended to separate two adjacent land uses or properties from one another.

## **Building**

Any structure used or intended for supporting or sheltering any use or occupancy.

## **Building Code**

The Florida Building Code, as amended, the National Electrical Code, as amended, the National Electrical Safety Code, as amended, FCC regulations, as amended, and any other applicable federal, state, and local building code.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Building footprint**

The area of a lot or site included within the surrounding exterior walls of a building or portion of a building, exclusive of courtyards. In the absence of surrounding exterior walls, the building footprint shall be the area under the horizontal projection of the roof.

### **Building line**

The line established by law, beyond which a building shall not extend, except as specifically provided by law.

### **Building permit**

An official document or certification that is issued by the building official after review for compliance with building constructions standards adopted by the Town and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure and does not include a review for compliance with land development regulations.

### **Building setback**

The distance as measured perpendicularly from the front, side, or rear property line to the building.

### **Business tax receipt**

A license issued by the Town as a prerequisite to the maintaining and conducting of a business, service or profession.

## **C**

### **Canopy**

Any fixed roof-like structure, not movable like an awning, and which is cantilevered in whole or in part self-supporting, but having no side walls or curtains other than valances not more than 18 inches deep. Lean-to canopies, fixed umbrellas and similar structures are included in this classification. Structures having side walls or valances more than 18 inches deep shall be classified as a tent as set forth herein.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Carport**

A private automobile shelter not completely enclosed by walls and doors.

## **Carrier**

A company licensed by the Federal Communications Commission (FCC) that provides wireless services. A tower builder or owner is not a carrier unless licensed to provide personal wireless services.

## **Child care facility**

Any facility where care, protection, and supervision for a minimum of six children are regularly provided, for a fee or grant and as further enumerated in Section 402.302(2), F.S.

## **Civic use**

A building or land area devoted to educational, neighborhood or governmental activities and serving the needs of the public or local citizenry.

## **Colonnade**

A series of columns set at regular intervals and usually supporting the base of a roof structure.

## **Commercial or retail uses**

The purchase, sale, or transaction involving the disposition of any article, substance, commodity, or service; the maintenance or conduct of offices, professions, financial or recreational or amusement enterprises conducted for profit and also including renting of rooms, business offices, and sales display rooms and premises.

## **Commercial vehicle**

A motor vehicle with two axles or more used for the purchase, sale or transportation of commodities including but not limited to motor or non-motored vehicles displaying the name(s) of commercial entities.

## **Community residential homes**

A dwelling unit licensed to serve residents, as defined in Section 419.001 (d), F.S., who are clients of the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, or the Department of Children and Family Services or a dwelling unit licensed by the Agency for Health Care

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

Administration which provides a living environment for 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.

### **Concurrency**

The necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.

### **Conditional use**

A use not permitted by right but may provide for an individual or community serving need and which, subject to conditions, would not impact the integrity of the zoning district.

### **Congregate Care and Nursing Home**

A facility that provides both medical and non-medical services to individuals in need of personal assistance essential for sustaining the activities of daily living, including care, food, lodging, supervision, habilitation, rehabilitation, and treatment they need.

### **Contiguous**

Lands are contiguous if they abut each other, or if separated by streets, ways, easements, pipelines, power lines, conduits, or rights-of-way under single ownership of the petitioner, a governmental agency, a subdivision or a public or private utility. Lands shall not be considered contiguous unless they can be developed with internal vehicular and pedestrian connectivity.

### **Convenience store**

A retail establishment offering for sale prepackaged food products, beverages, limited household items, and other goods. A convenience store may also sell fuel but does not permit major or minor service.

## **D**

### **Density**

An objective measurement of the number of people or residential units allowed per unit of land, such as residents or employees per acre.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Density, gross**

The total number of dwelling units divided by the overall area (as measured to the centerline of adjacent streets).

## **Density, net**

The total number of dwelling units divided by lot area (exclusive of rights-of-way).

## **Developer**

Any person, including a government agency, undertaking any development as defined herein.

## **Development**

Any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

## **Development order**

Any order granting, denying, or granting with conditions an application for a development permit.

## **Development permit**

Any building permit, zoning permit, subdivision approval, rezoning, certification, variance, or any other official action of local government having the effect of permitting the development of land.

## **Demolition**

The complete constructive removal of a building or structure on any site.

## **Director**

The Community Development Director or his or her qualified designee.

## **District**

Any area delineated on the official zoning map under the terms and provisions of this Code or which may hereinafter be created subsequent to the enactment of this Code for which regulations governing the area, height, use of buildings, or use of land, and other regulations relating to development or maintenance of existing uses or structures, are uniform.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Driveway**

A vehicular access or a private road that enables vehicles to travel from a public or private road to the entrance of a public or private property.

## **Drive-thru/Drive-in**

An establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for vehicles so as to serve patrons while in the vehicle rather than within a building or structure.

## **Duplex**

A building containing two single-family dwelling units totally separated from each other by a vertical common firewall. Each unit shall have direct access to the outside and separate cooking and sleeping areas.

## **Dwelling or residence**

Any building or part thereof, occupied in whole or in part, as the residence or living quarters of one or more persons, permanently, or temporarily, continuously or transiently.

## **Dwelling, multifamily**

A building or portion thereof used for occupancy of three or more families living independently of each other and containing three or more dwellings including, but not limited to, what is commonly known as an apartment building.

## **Dwelling, single-family attached (group, row, duplex, and townhouses)**

One or more dwellings having a common or party wall.

## **Dwelling, single-family detached**

A dwelling not occupied by more than one family; a dwelling comprised of only one unit.

## **E**

## **Easement**

An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Educational facilities/school**

See the school definition.

## **Educational institution**

Premises or site upon which there is an institution of learning, whether public or private, which conducts regular classes, courses of study, or both, required for accreditation by or membership in the State Department of Education of Florida, Southern Association of Colleges and Secondary Schools, or the Florida Council of Independent Schools. This term also includes art galleries and museums open to the public; or special institution of learning.

## **Entertainment Center**

Any establishment where entertainment, either passive or active, is provided for the pleasure of the patrons. Such entertainment includes but is not limited to vocal and instrumental music, dancing, karaoke, comedy, acting, video arcades and similar uses.

## **Entrance features**

Any combination of decorative structures and landscape elements located at the entrance to a development, which identifies or draws attention to the development and/or exercises control of ingress and egress to the development. An entrance feature may include, although not necessarily be limited to, ornamental walls, fences, identifying lettering, logos, works of art, and other decorative structures, earthworks, water bodies, fountains, trees, plantings, and other landscape elements, as well as gatehouses, either singly or in any combination thereof.

## **Existing development**

The use of a lot, parcel or structure at the time of the enactment of the code or any section thereof.

## **Existing urban service area**

Built-up areas where public facilities and services such as sewage treatment systems, roads, schools, and recreation areas are already in place.



# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **F**

### **Façade**

That exterior side of a building which faces, and is most nearly parallel to, a public or private street. The facade shall include the entire building walls, including wall faces, parapets, fascia, windows, doors, canopies, etc. but does include exposed roof surfaces.

### **Family**

One or more persons living together as a single housekeeping unit.

### **Family Day Care Home**

An occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. Household children under 13 years of age, when on the premises of the family day care home or on a field trip with children enrolled in child care, shall be included in the overall capacity of the licensed home. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include household children under 13 years of age: (a) A maximum of four children from birth to 12 months of age. (b ) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children. (c ) A maximum of six preschool children if all are older than 12 months of age. (d) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age. Sec. 402.302 Florida Statutes.

### **Federal Communications Commission (FCC)**

An independent government agency that regulates interstate and international communications by radio and television and wire and cable and satellite. The FCC works towards six goals in the areas of broadband, competition, the spectrum, the media, public safety and homeland security.

### **Fence**

A barrier used to enclose a property as a means of protection or confinement.

### **Financial Feasibility**

Shall mean as provided in Section 163.3164(32), Florida Statutes, as amended.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Five minute walk**

The average distance an adult is able to traverse in a five minute period.

## **Flag**

A piece of fabric with a color or pattern representing a government or other organization, entity, or idea.

## **Floodplain management**

### **Area of shallow flooding**

A designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

### **Area of special flood hazard**

The land in the floodplain within a community subject to a one- percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

### **Base flood**

The flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood").

### **Base flood elevation**

The water-surface elevation associated with the base flood.

### **Basement**

That portion of a building having its floor sub-grade (below ground level) on all sides.

### **Best management practices**

Any activities, prohibitions, practices, procedures, programs, or other measures designed to prevent or reduce the discharge of pollutants directly or indirectly into waters of the United States. This shall include but are not limited to those measures specified in the stormwater best management practice

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

handbooks for municipal, industrial/commercial, and construction activity and those measures identified by the Town.

### **Breakaway wall**

A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

### **Coastal high hazard area**

An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone VI – V30, VE, or V.

### **Datum**

A reference surface used to ensure that all elevation records are properly related. Many communities have their own datum that was developed before there was a national standard. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

### **Elevated building**

A non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

### **Encroachment**

Any portion of any structure that extends beyond the required setback, easement or floodplain.

### **Existing construction**

For the purposes of floodplain management, structures for which “the start of construction” commenced before the date of the initial Flood Insurance Rate Map (FIRM). Existing construction, means for the purposes of determining rates structures for which the “start of construction” commenced September 29, 1972. This term may also be referred to as “existing structures”.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Flood or flooding**

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) The overflow of inland or tidal waters.
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
  - (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

## **Flood boundary and floodway map (FBFM)**

The official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

## **Flood Hazard Boundary Map (FHBM)**

An official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Flood Insurance Rate Map (FIRM)**

An official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

## **Flood Insurance Study (FIS)**

The official hydraulic & hydrologic report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

## **Floodplain**

Any land area susceptible to being inundated by water from any source (see definition of “flooding”).

## **Floodplain management**

The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

## **Floodplain Administrator**

The individual appointed to administer and enforce the floodplain management regulations of the community.

## **Floodplain management regulations**

This code and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Floodproofing**

Any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

## **Floodway**

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

## **Floodway area**

The channel of a watercourse and those portions of the adjoining floodplains which are required to carry and discharge the 100-year flood with no significant increase in the base flood elevation.

## **Floodway fringe**

That portion of a floodplain that is inundated by floodwaters but is not within a defined floodway. Floodway fringes serve as temporary storage for floodwaters.

## **Free of Obstruction**

Any type of lower area enclosure or other construction element that will obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event is not allowed. This requirement applies to the structures in velocity zones (V-Zones).

## **Freeboard**

The additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge or culvert openings and hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Functionally dependent use**

A use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

## **Low impact stormwater control system design**

A storm water management approach modeled to allow natural infiltration of rainfall as close as possible to the original area of rainfall. The design replicates a–an unimproved natural system which does not involve piped or curb and gutter applications; but achieves infiltration through design of a well maintained natural meandering grass swale system. Low impact design protects natural resources from pollutants, reduces unnecessary consumption of land and increases the preservation of natural open space.

## **Lowest floor**

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the nonelevation design standards of this ordinance.

## **Mangrove stand**

An assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

## **Mean Sea Level**

The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this Code, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **New construction**

For floodplain management purposes, any structure for which the “start of construction” commenced on or after the effective date of the initial floodplain management code, ordinance, or standard based upon specific technical base flood elevation data that establishes the area of special flood hazard – include only one date. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or before September 29, 1972, and includes any subsequent improvements to such structures, are considered new construction.

## **National Geodetic Vertical Datum (NGVD) of 1929**

A vertical control used as a reference for establishing varying elevations within the floodplain.

## **Regulatory floodway**

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

## **Remedy a deficiency or violation**

For the purposes of floodplain management, to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

## **Repetitive loss**

For the purposes of floodplain management, flood related damage sustained on a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.



# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Riverine**

Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

## **Watercourse**

A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

## **Water surface elevation**

The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

## **Floor area, gross**

The sum of the horizontal areas of all floors of a building, including areas used for human occupancy in basements; and attics, as measured from the exterior faces of the walls. Such area does not include basements, unenclosed porches, or attics not used for human occupancy.

## **Floor area ratio (FAR)**

A measurement of development intensity determined by dividing the floor area of the building or buildings on any lot by the net area of the lot.

## **Florida Friendly Landscaping**

Guiding principles of the Florida Yard and Neighborhood programs which principles include locating the right plant in the right place, water efficiently, fertilize appropriately, mulch, attract wildlife, manage pests, responsibly recycle, reduce storm water runoff, and protect the waterfront.

## **Frontage**

The length of any one property line of a site, which property line abuts a legally accessible public right-of-way.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **G**

### **Garage, public**

A structure designed and used for the storage of motor vehicles.

### **Garage, private**

A structure for the private use of the owner or occupant of a principal structure situated on the same lot for the storage of motor vehicles.

### **Garage, repair**

A building designed and used for the storage, care, repair, or refinishing of motor vehicles, including both minor and major mechanical overhauling, paint, and body work.

### **Geographic search area**

That initial circular area which has a radius of no less than one (1) mile designated by a wireless provider or operator for a new tower. The geographic search area shall be determined based upon engineering considerations including grids, frequency coordination and levels of service consistent with good engineering practices.

### **Glare**

A light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see and in extreme cases to cause momentary blindness.

### **Grade**

The elevation established for the purpose of regulating the number of stories and the height of buildings. Grade shall be the mean level of the finished surface of the ground adjacent to the exterior walls of a building or a base to support a structure.

### **Green Definitions**

#### **Construction and demolition debris or C&D**

Used or commonly discarded materials removed from premises of a project during construction, remodeling, repair, demolition, deconstruction or renovation resulting from construction, renovation, remodeling, repair, deconstruction, or demolition operations on any pavement, house, residential building, non-residential building, or other structure, or from landscaping. Such

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavement, house, residential building, non-residential building, and other structures.

### **Cut-off type lighting fixture**

A luminaire that allows a minimum amount of light directed at a horizontal plane (ninety (90) degrees). Light above the horizontal plane is limited to less than 2.5% of the total lamp lumens.

### **Florida Green Building Coalition (FGBC)**

The Florida Green Building Coalition, Inc. a Florida 501(c)(3) not-for-profit corporation whose mission is to establish and maintain a Florida system of statewide green building standards and third party certification programs with environmental and economic benefits.

### **Fuel-Efficient Vehicles**

Vehicles which have achieved a minimum green score of 40 according to the annual vehicle-rating guide of the American Council for an Energy Efficient Economy.

### **Full cut-off fixture**

A luminaire, as installed, that is designed or shielded in such a manner that no light is present at or above a horizontal plane.

### **Fully shielded**

A light fixture constructed in such a manner that all light emitted by the fixture, whether directly from the lamp or a defusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal as determined by photometric test or certified by the manufacturer. Any structural part of the light fixture providing this shielding must be permanently affixed. Fixture shall be mounted such that no light is emitted above the horizontal plane.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Green building**

A structure that is designed, built, renovated, operated and reused in an ecological and resource-efficient manner.

## **Green building certification**

The final designation awarded by a nationally recognized third party certifying agency such as the GBCI or FGBC, or other third party certifying agency as approved by the Town Manager, evidencing compliance with the certification requirements under the applicable program.

## **Green Building Certification Institute (GBCI)**

The organization which administers and provides third-party project certification for commercial and institutional buildings and tenant spaces under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED®) Green Building Rating Systems™.

## **Green Globes®**

The most recent version of the Green Globes® Rating System which includes Green Globes for New Construction and Green Globes for Continual Improvements of Existing Buildings.

## **Hybrid vehicles**

Vehicles which use a gasoline engine to drive an electric generator and use the electric generator and/or storage batteries to power electric motors that drive the vehicle's wheels.

## **LEED®**

The most recent version of the Leadership in Energy and Environmental Design® Rating System which is a third party certification system designed for rating various building types as developed by the U.S. Green Building Council.

## **Light pollution**

Any adverse effect of manmade light including, but not limited to, discomfort to the eye or diminished vision due to glare, light trespass, uplighting, the uncomfortable distraction to the eye, or any man-made light that diminishes the ability to view the night sky.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Light trespass**

The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

### **Lumen**

A unit of luminous flux; used to measure the amount of light emitted by lamps.

### **Nadir**

The direction pointing vertically down from the lowest light emitting part of the luminaire.

### **Solar Reflective Index (SRI)**

A measure of a material's ability to reject solar heat, as shown by a small temperature rise. It is defined so that a standard black (reflectance 0.05, emittance 0.90) is 0 and a standard white (reflectance 0.80, emittance 0.90) is 100.

### **Uplighting**

Fully shielded lighting that is directed in such a manner as to shine light rays above the horizontal plane.

### **Volatile Organic Compounds (VOCs)**

Carbon compounds that participate in atmosphere photochemical reactions (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides and carbonates, and ammonium carbonate). The compounds vaporize at normal room temperatures.

### **Group home**

A facility which provides a living environment for a maximum of six unrelated residents who operate as the functional equivalent of a family, including such supervision and care as may be necessary to meet the physical, emotional and social needs of the residents. Adult congregate living facilities comparable in size to group homes are included in this definition. It shall not include rooming or boarding homes, clubs, fraternities, sororities, monasteries or convents, hotels, residential treatment facilities, nursing homes, or emergency shelters.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Growth Management Plan**

A plan that meets the requirements of sections 163.3177 and 163.3178, F.S.

## **H**

### **Height**

The vertical distance from grade to the highest point of the structure in all districts, unless exempted per the requirements of exclusion from height limits.

### **Height limit**

The limit to the vertical extent of a structure that is measured in number of stories or feet.

### **Historic structure, building, site, object, or district**

Any structure, building, site, object, or district that is listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register: certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district: on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or on a local inventory of historic places in communities with historic preservation programs that have been certified either: by the approved Florida program as determined by the Secretary of the Interior, or directly by the Secretary of the Interior.

### **Home-based public assembly use**

An assembly for social, religious, or other reasons, which is an incidental accessory use to the principal residential use of a residential dwelling unit.

### **Home office**

An office designed for and operated as a home occupation/office location in a dwelling unit, and carried on by a person residing in the dwelling unit involving only written correspondence, telephones, computers, or other common office equipment, and which is clearly ancillary and secondary to the use of the dwelling for residential purposes. A home office shall preclude any business operation which requires or

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

permits customers, employees or patrons to visit the dwelling. The incidental taking of office work home and completing same, by a person having a business address other than the residence, shall not constitute the establishment of a home office and shall continue to be permitted in conjunction with a residential use. It is further provided that an office use ancillary to a permitted, bonafide agricultural use shall not constitute a home office.

### **Hotel**

A building, or part thereof, in which sleeping accommodations are offered to the public, primarily on a short term or transient basis, with no cooking facilities for use by the occupants, in which there may be a public dining room for the convenience of the guests, and access to the sleeping rooms is through an inside lobby or office.

## **I**

### **Impervious area**

That portion of a lot measured in square feet which is incapable of being penetrated by rainwater. This shall include, but not be limited to, all structures, roof extensions, terraces, porches, sidewalks, pools, driveways and athletic courts.

### **Institutional use**

A religious institution, library, school, hospital, medical or convalescent center, government facility or other similar uses.

### **Interference**

The impairment of transmission or reception of any desired communications or radio frequencies within the Town. This term embraces electrical interference in all of its forms, including, without limitation, co-channel interference, interference from intermodulation products, and blanketing inference.

## **K**

### **Kenel**

- (I) The keeping of any dog or dogs, regardless of number, for sale, breeding, boarding, or treatment purposes, except by a hobby breeder as defined in this

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

chapter or, as provided by law, in a dog hospital, dog beauty parlor, pet care center, pet shop, dog racing establishment, governmental agency, laboratory, or facility housing animals for medical research that is approved by a federal agency; or

- (2) The keeping of dogs, six (6) months of age or older, on premises used for residential purposes, in excess of the following numbers: (a) four (4) dogs on property that is less than 1 acre in gross area, or in any individual residence unit in a multifamily zoning district; (b) six (6) dogs on property that is at least 1 acre but less than 2 acres in gross area; and (c) eight (8) dogs on property that is 2 acres or more in gross area; or
- (3) The keeping of more than four (4) guard dogs on vacant property or on property used for business or industrial purposes.

### **L**

#### **Land Development Regulations**

Any ordinance enacted by the Town for the regulation of any aspect of development, including an ordinance governing zoning, subdivisions, landscaping, tree protection, or signs, the Town's Growth Management Plan, or any other ordinance concerning any aspect of the development of land.

#### **Landscape feature**

Any improvement or vegetation including, but not limited to courtyards, fences, shrubbery, trees, sidewalks, planters, plantings, gates, low walls, street furniture and exterior lighting.

#### **Landscape plan**

A plan associated with a subdivision, land development, or parking facility plan indicating the placement of landscape materials, including specifications, species, quantities, and method of installation.

#### **Local Planning Agency**

The agency designated pursuant to Section 163.3174 F.S.



## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Loading space**

An off-street space on the same lot with a building or group of buildings, for temporary parking of a commercial vehicle while loading and unloading merchandise or materials.

### **Lot**

A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed or built upon.

### **Lot area, gross**

The area of the overall parcel as measured to the centerline of the adjacent rights-of-way.

### **Lot area, net**

The area of the parcel excluding the adjacent rights-of-way.

### **Lot, corner**

A lot abutting the intersection of two or more streets.

### **Lot coverage**

The area of a lot which is occupied or covered by, but not limited to, buildings, including covered porches and accessory buildings, decks, pools, driveways, walkways, patios, sidewalks, parking structures and roads (i.e. impervious areas).

### **Lot depth**

The *mean* horizontal distance between the front and rear lot lines.

### **Lot frontage**

The distance for which the front lot line and the street right-of-way line are coincident.

### **Lot line, front**

The front of a lot shall be construed to be that portion abutting the street. For corner lots, the lot front shall be the narrowest portion of the lot abutting any street.

### **Lot line, rear**

The rear property line of a lot is that lot line opposite to the front property line.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Lot line, side**

Any lot boundary line not a front lot line or a rear lot line. A side lot line separating a lot from a street is an exterior side lot line. A side lot line separating a lot from another lot or lots is an interior side lot line.

### **Lot width**

The horizontal distance between side lot lines, measured at the required front setback line.

## **M**

### **Major renovation/remodel**

Any design and construction project that alters the structure or other site improvements of an existing building where the cost of construction is equal to or exceeds 40% of the building's replacement cost.

### **Major and minor repair service**

Major service is the general repair, rebuilding, or reconditioning of engines, vehicles or similar equipment; activities associated with engine, bodywork, frame, fender, collision services, and painting.

Minor service is the general maintenance of vehicle and similar equipment including brake, muffler, tire repair and change, lubrication, and tune ups.

### **Manufactured home**

A building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

### **Market value**

The building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

### **Mechanical equipment**

An air conditioning unit, water cooling tower, swimming pool pump, irrigation pump, well water pump, fan, power generator or other similar power source equipment, permanently affixed to real property.

### **Mixed use**

The development of a tract of land or building or structure with two or more different uses which include, but not limited to, residential, office, commercial, retail, public, or entertainment, in a pedestrian oriented compact urban form.

### **Mobile Food Services Operations**

This means the preparation/cooking, serving and/or sale of food conducted from vehicle or trailer. Each individual vehicle or trailer shall be considered a mobile food service operation.

### **Mobile home**

A trailer designed to be used as living quarters, providing the normal and usual facilities of a residence, intended by size and capacity for extended use as a dwelling which is constructed with a permanent hitch or other device allowing transport of the unit.

### **Model home**

A structure constructed to represent a certain residential unit design meeting all the requirements of the Town for approval of a certificate of occupancy except for approval of the land use upon which the model home is built.

### **Model home, dry**

A model home constructed completely in accordance with the ordinances and requirements of the Town but which shall not be connected to some or all utility services.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Motel**

A motel is a building or a group of two (2) or more buildings designed to provide sleeping accommodations for transient or overnight guests. Each building shall contain a minimum of ten (10) residential units or rooms which shall generally have direct, private openings to a street, drive, court, patio, or the like.

### **Multi-family structure**

A building or portion thereof used for occupancy of three or more families living independently of each other in individual dwelling units; including units that are located over one another; having separate or joint entrances.

## **N**

### **Neighborhood convenience store**

A convenience store limited in intensity of use to serve primarily the immediate surrounding neighborhoods.

### **Newspaper of general circulation**

A newspaper published at least on a weekly basis and printed in the language most commonly spoken in the area within which it circulates, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising, as provided for in Section 163.3164(15), Florida Statutes, as amended.

### **Nightclub**

A commercial establishment in which music, dancing and/or entertainment is conducted as a principal use.

### **Nonconforming structure**

A structure or portion thereof, existing at the effective date of these regulations or any amendment thereto, which was designed or structurally altered for a use not permitted at its location by the provisions of these regulations as a new use, and/or which does not conform to all of the regulations applicable to the district in which it is located, such as setbacks, minimum floor area, and the like.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Nonconforming use**

The use of a structure or premise, existing at the effective date of these regulations, or any amendment thereto, for any purpose not permitted as a use in the zoning district in which it is located.

## **Nursing home facility**

Any facility which provides nursing services as defined in Part I of Chapter 464 and which is licensed according to this part.

O

## **Office use**

A use associated with conducting the affairs of a business, profession, service industry, or government.

## **Off-street parking**

The storage space for vehicles on premises other than rights-of-way.

## **Open space**

Land used for recreation, resource protection, amenity, and/or buffers.

## **Outdoor dining area**

An area of designated size used as a seating area with tables and chairs for the contiguous restaurant. This seating may be in addition to the indoor seating or it may be the only seating available for the restaurant.

## **Outdoor sale**

The placement of goods, equipment, or materials for sale, rental, or lease in a location not enclosed by a structure consisting of walls and a roof. “Outdoor display” shall not mean yard sales as defined in the Town Code.

## **Outdoor storage**

The storage of any material for a period greater than 24 hours, including items for sale, lease, processing, and repair (including vehicles) not in an enclosed building.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **P**

#### **Pain Management Clinic**

Any publicly or privately owned medical office or clinic: (a) That advertises in any medium for any type of pain management services; or (b) Where in any month a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for treatment of chronic nonmalignant pain.

#### **Parapet**

The portion of a building wall which rises above the roof level.

#### **Parcel of Land**

Any quantity of land capable of being described with such definiteness that its locations and boundaries may be established, which is designated by its owner or developer and land to be used, or developed as, a unit or which has been used or developed as a unit, as provided in Section 163.3164(16) F.S.

#### **Park**

Any area that is predominately open space, used principally for active or passive recreation, and not used for a profit making purpose.

#### **Parking**

The temporary, transient storage of vehicles used for transportation, while their operators are engaged in other activities. Parking shall not include storage of new or used cars for sale, service, rental or any other purpose other than specified above.

#### **Parking lot or garage, satellite**

A parking lot or garage which is accessory to but located on a lot which is not contiguous with the main permitted use.

#### **Parking lot and/or garage, valet**

A parking lot and/or garage which is accessory to and that may or may not be located on the same lot as the main permitted use, where non-commercial personal automobiles and vans are parked solely by employees or agents of the owner of the main permitted use.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Parking space or stall**

An area on a lot and/or within a building intended for parking of a personal vehicle.

## **Patio or terrace living area**

A constructed hard surface area that is paved or bricked (not asphalt).

## **Pawn shop**

A business establishment which accepts merchandise as security for cash loans and which offers the merchandise for sale after an agreed upon period of time if the loan has not been paid.

## **Pedestrian-oriented development**

Development designed with an emphasis primarily on the street sidewalk and on pedestrian access to the site and building, rather than on auto access and parking areas. The building is generally placed close to the street and the main entrance is oriented to the street sidewalk. There are generally windows or display cases along building facades which face the street. Typically, buildings cover a large portion of the site. Although parking areas may be provided, they are generally limited in size and they are not emphasized by the design of the site.

## **Performance guarantee**

A financial guarantee (letter of credit or bond) to ensure that all improvements, facilities, or work required will be completed in compliance with the ordinances, regulations, plans, permits and specifications of a development.

## **Permit**

See Development Permit

## **Personal service**

An establishment primarily engaged in providing frequent or recurrent needed services of a personal nature, such as a hair or nail salon.

## **Place of public assembly**

Any area where individuals assemble, whether publicly or privately owned and maintained, where assembly is the principal use of the property. This includes, but is not limited to, auditoriums, fraternal lodges, community centers, private clubs, and

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

theaters; and places of worship or other facilities that are used for prayer and assembly by persons of similar beliefs.

### **Planned unit development (PUD)**

Land under unified control to be planned and developed as a whole or in phases. A PUD includes structures and uses substantially related to the character and purposes of the planned development and is built according to general and detailed plans. A PUD includes a program for the operation, and maintenance of such areas, facilities, and improvements as will be for the common use by some or all of the occupants of the PUD zoning district, but which will not be provided, operated, or maintained at general public expense.

### **Plat**

A plan, map, or chart of a piece of land with actual or proposed features.

### **Final Plat**

The final tracing map or drawing or chart on which the subdivider's plan of subdivision is presented to the governing body for approval, and which, if approved, will be submitted to the Clerk of the Circuit Court for recording.

### **Tentative Plat**

A preliminary map, drawing or chart indicating the proposed layout of the subdivision submitted for approval and as further defined in Chapter 28, Code of Miami-Dade County. The purpose being for subdivision design, therefore conceptual in nature, and subject to change prior to the boundary survey being made for which a plat of record is being filed.

### **Waiver of Plat**

A subdivision that involves only the dedication of a road, highway, street, alley or easement and due to unusual conditions or circumstances the Town finds that it is not necessary that a plat be recorded; or, that the land to be subdivided is to be divided into no more than six (6) parcels; or, that the land is of such an unusual size or shape or has other unusual conditions that justify waiving the plat requirement; or, a parcel of land conveyed by a recorded warranty deed that is dated prior to June 20, 2012.



# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Pole**

Any utility, electricity, telephone, power or light pole, other than any pole owned by the Town.

## **Porch**

An attached open air projection from the outside façade of a building covered by a roof and used solely for ingress and egress and not for occupancy.

## **Porte cochere**

A structure attached to a residence and erected over a driveway, not exceeding one story in height, and open on two or more sides.

## **Portico**

A colonnade or covered ambulatory and often at the entrance of a building.

## **Principal building**

A building in which is conducted the primary or predominant use of the lot on which it is located.

## **Promenade**

A wide controlled pedestrian walk, formal in aesthetic design. They may be made of pavers, crushed gravel, grass, wood decking, or concrete.

## **Public**

Belonging or open to, enjoyed and used by and/or maintained for the public generally, but not limited to a facility the control of which is wholly or partially exercised by some governmental agency.

## **Public Facilities**

Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

## **Public hearing**

A publicly advertised meeting of an official legislative or quasi-judicial body conducting town business during which the, public is allowed to give testimony concerning issues under consideration.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Public notice**

Notice as defined by s. 163.3164(18) F.S.

## **Public safety and nuisance**

Anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

## **Public service/utility uses**

Those which provide essential or important public services such as: emergency dispatch centers for fire, police and rescue; broadcasting stations; utility facilities such as water or wastewater plants, electricity substations, maintenance facilities for schools or telephone companies.

## **Public Rights-of-Way or ROW**

A public right-of-way, public utility easement, highway, street, bridge, tunnel, pier, waterway, dock, wharf, court, lane, path, or alley or any other property for which the public entity is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the public entity holds a property interest therein. “Public Rights-of-Way” shall not include private property. “Public Rights-of-Way” shall not include any real or personal property except as described above and shall not include Town buildings, fixtures, Poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way. For the purposes of wireless telecommunication facilities, the Town is the sole authority for public rights-of-way.

## **R**

## **Recreation facilities, private**

A private recreational facility for use solely by the residents and guests of a particular residential development, planned unit development, or residential neighborhood, including indoor and outdoor facilities. These facilities are usually proposed or planned in association with development and are usually located within or adjacent to such development.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Recreation facilities, public**

A component of a recreation site used by the public such as a trail, court, athletic field or swimming pool.

## **Recreational vehicle**

Recreational and camping equipment in the form of travel and camping trailer, swamp buggy and other off-road vehicles and motor travel home.

## **Regional Shopping Center**

A concentration of retail, service, and entertainment enterprises with common parking facilities designed to serve the surrounding region.

## **Religious institutions**

Churches and ecclesiastical or denominational organizations, or established physical places for worship in this State at which nonprofit religious services and activities are regularly conducted and carried on, and shall also mean church cemeteries.

## **Repair garage**

A building designed and used for the storage, care, repair, or refinishing of vehicles, including both major and minor service.

## **Residential uses**

Activities within land areas used predominantly for housing.

## **Restaurant**

A food and/or beverage establishment that prepares food on the premises for consumption either on or off the premises. Bars or lounge areas are considered an incidental use to the restaurant.

## **Retail**

The sale of commodities or goods which are sold to the ultimate consumer.

## **Right-of-way**

See Public Rights-of-Way

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Road, private**

Vehicular ingress and egress established as a separate tract for the benefit of certain adjacent properties not abutting public right-of-way.

### **Roof**

The exterior top covering of a building.

### **Roof line**

The top edge of the roof or top of the parapet, whichever forms the top line of the building structure.

### **Roof overhang**

The overhead features of an architectural element beyond the building wall such as roofs.

## **S**

### **Satellite dish antenna**

A round, parabolic antenna intended to receive signals from orbiting satellites and other sources.

### **School**

An institution for the teaching of children or adults including daycare, pre-school, primary and secondary schools, colleges, professional schools, dance schools, business schools, trade schools, art schools, and similar facilities.

### **Screening**

The method by which a view of one site from another adjacent site is shielded, concealed, or hidden. Screening techniques include fences, walls, hedges, berms, or other features.

### **Service station**

Any premises where fuel and similar products are sold and minor services may be conducted.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Setback**

The minimum horizontal distance between the lot or property line and the nearest front, side, or rear line of the building, as the case may be, including terraces or any covered projection thereof. Steps and ramps are excluded from this calculation.

## **Setback, Front**

A setback that is measured from a front lot line.

## **Setback, interior side**

A setback that is measured from an interior side lot line.

## **Setback, rear**

A setback that is measured from a rear lot line.

## **Setback, side**

A setback that is measured from a side lot line.

## **Shared parking**

Any parking spaces intended to be utilized for more than one use occurring on a single lot or within a single building, where persons utilizing the spaces are unlikely to need the spaces at the same time of day.

## **Shopping center**

A commercial or mixed use development with at least two hundred fifty (250) feet of street frontage zoned for commercial, retail, and/or office purposes under one (1) application and under one (1) or more ownership, and having three or more uses.

## **Showroom**

A building or premises where new vehicles, boats, equipment, furniture, appliances, and other products are prominently displayed and offered for sale by an authorized agent.

## **Sight distance triangle**

An area of land at the intersection of streets, or a street and a driveway, within which nothing may be erected, planted, placed, or allowed to grow in a manner which will obstruct the vision of motorists entering or leaving the intersection.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Sign**

Any device or representation for visual communication that is used for the purpose of bringing the subject matter to the attention of the public. Signs include, but are not limited to, figures, letters, logos, devices, flags, pennants, emblems, and pictures.

## **Abandoned sign**

A sign for a business or purpose that is no longer present at the sign location.

## **Animated sign**

A sign that uses movement, change of lighting or change of color to depict action or create a special effect or scene. Also, a sign or device visible from the public right-of-way with letters or characters that move or change more frequently than every six (6) seconds.

## **Area of sign**

Sign area shall be computed by means of the smallest square, circle, or rectangle, triangle, or combination of shapes that will encompass the outer limits of the writing, representation, emblem, logo or other display, together with any material or color forming an integral part of the background of the display or area used to differentiate the sign from the backdrop against which it is placed. Sign area shall not include any supporting framework, bracing, or wall when such structure otherwise meets the regulations of this Code and is incidental to the display itself. Signs comprised of individual elements attached to a building wall shall be measured as one unit, when the distance between the sign elements is less than two times the dimension of each element. When the faces of a double-faced sign are parallel, only one side shall be counted in computing sign area. If the two faces of such double-faced sign are of unequal area, the larger sign face shall be considered the area of the sign.

## **Attached sign**

A sign which is attached to or supported by a building, a wall, or other structure. The definition of “attached sign” shall not include a sign painted directly on the wall face of a building or structure.

## **Automatic electric changing sign (“ACS”)**

Any electrical or electronically controlled sign where different messages or copy changes are shown, and including tri-vision panels. Also, any sign, or

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

portions of a sign, where any light source, including but not limited to incandescent bulbs or light-emitting diodes (LEDs), constitutes the sign text or image. This type of sign includes, but is not limited to electronic message boards; television screens; plasma screens; digital screens; flat screens; LED screens; video boards; other types of electric and electronic display boards and screens; and holographic displays.

### **Awning, canopy, roller curtain or umbrella sign**

Any sign which is stamped, perforated, or stitched on the surface area of an awning, canopy, roller curtain or umbrella.

### **Banner**

A sign intended to be hung either with or without a frame, possessing characters, letters, illustrations or ornamentation applied to paper, plastic, fabric or other non-rigid material, excluding flags and insignias of any government entity.

### **Building marker signs**

Any sign indicating the name of a building and date and incidental information about its construction.

### **Canopy sign**

A sign that is suspended from, attached to, supported from, or forming a part of a canopy.

### **Cantilever**

That portion of a building, projecting horizontally, whether it be on the same plane as the roof line or not.

### **Cantilever sign**

Any sign which is mounted on a cantilever.

### **Changeable copy signs**

Any sign within a monument display designated so that letters or numbers are manually attached or automated to change to a different message.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Channel letter sign**

Using three-dimensional letters, numbers or logos with a groove, or other indentation or recess in the surface having an independent physical existence from the building or other structure to which it is attached.

## **Construction sign**

Any sign erected and maintained on the premises temporarily while undergoing construction by an architect, contractor, developer, finance organization, subcontractor, or materials vendor upon which property such individual is furnishing labor, services, or material.

## **Detached sign**

Any sign not attached to or painted on a building, but which is affixed and permanently attached to the ground and which is not a monument sign as defined herein. “Permanently attached” as used herein shall mean that the supporting structure of the sign is attached to the ground by a concrete foundation or other support anchored in the ground.

## **Directional sign**

- (1) A sign permanently erected or permitted directing an individual to a location of ingress or egress to or from the property.
- (2) A sign permanently erected or permitted identifying a building or buildings.

## **Directory sign**

A sign interior to the property listing only the names and/or uses, or locations of more than one business, activity, or professional office conducted within a building, group of buildings, or commercial center or office park.

## **Election sign**

A sign relating to a candidate for political office or a measure scheduled for election.

## **Facade sign**

A sign consisting of letters and graphics applied directly to the façade of the building, within the single external sign band or zone designated on the façade of a building.



# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Face of sign**

The part of the sign that is or can be used to identify, advertise, or communicate information or for visual representation that attracts the attention of the public for any purpose. Sign face includes any background material, panel, trim, color, and direct or self-illumination used that differentiates the sign from the building, structure, backdrop surface, or object upon which or against which it is placed. The sign structure shall not be included as a portion of the sign face provided that no message, symbol, or any of the aforementioned sign face criteria are displayed on or designed ad part of the sign structure.

## **Fixed projecting sign**

A sign affixed to the exterior wall of a building or structure with the sign face(s) not parallel to the plane of such wall.

## **Flat sign**

A sign erected parallel to and extending not more than 12 inches from the façade of any building to which it is attached and supported throughout its entire length by the façade and not extending above the façade.

## **Freestanding sign**

A sign supported by a sign structure secured in the ground that is wholly independent of any building, fence, vehicle, or object other than the sign structure for support.

## **Hanging sign**

A sign that hangs down and is supported by or attached to the underside of a canopy, awning, marquee, or extension of a structure.

## **Height of sign**

The vertical distance measured from the nearest crown of the adjacent road to the top of the sign face or sign structure, whichever is greater.

## **Incidental sign**

A sign, generally informational, that has a purpose secondary to the use of the site on which is it located, such as parking, entrance, loading only, and similar information and directives.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Marquee**

A covered structure projecting from, and supported by the building with independent roof and drainage provisions, and which is erected over a doorway or entranceway as protection against the weather.

## **Monument sign**

A freestanding, self-supported structure not attached or affixed in any way to a building or any other primary structure, and with concealed means of support that is ground mounted.

## **Multi-family office sign**

A sign identifying the location of the management office of a multifamily residential property.

## **Multi-tenant center sign**

Any shopping center, office center or business center in which two (2) or more occupancies abut each other or share common parking facilities or driveways or are otherwise related.

## **Noncommercial sign**

A sign that does not contain copy that advertises the availability of any merchandise, service, institution, residential area, entertainment, or activity. This includes any sign relating to political speech except Election Signs.

## **Obsolete sign**

A sign for a business or purpose that no longer exists.

## **Off-premises sign**

A sign that directs attention to a commercial business, commodity, service, product, or activity not conducted, sold, offered, or available on the premises where such sign is located, the copy of which may be intended to be changed periodically. An off-premises sign is the principal use of the property on which it is located. It may also be referred to as a "billboard." This definition includes a sign displayed on a trailer or the bed of a truck that advertises something other than the identity of the truck, the driver or its contents.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **On-premises sign**

A sign that is located on the premises of the occupant, business, or property identified on the sign. The occupant, business, or property is the principal use of the property, and the sign is an accessory use of the property on which it is located.

### **Painted sign**

A sign painted directly on any exterior portion of a structure.

### **Point of sale sign**

Any sign advertising or designating the use, occupant of the premises, or merchandise or products sold on the premises.

### **Pole sign**

A sign erected upon a pole, poles, post, or "pole-like" structure that is visible and wholly independent of any building or structure for support.

### **Portable sign**

Any sign not attached to or painted on a building and not affixed or permanently attached to the ground.

### **Projected sign**

Any image projected onto any surface or into the sky for the purpose of drawing the attention of the public or identifying an establishment, product or service.

### **Projecting sign**

Any sign which is an independent structure, which is attached to the building wall, and which extends at any angle from the face of the wall.

### **Real Estate leasing sign**

A sign erected by the owner or his or her agent advertising the premises or real property upon which the sign is located for rent or lease.

### **Real Estate for sale sign**

A sign erected by the owner or his or her agent advertising the real property upon which the sign is located for sale.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Reverse channel letter sign**

Opaque individual letter, numbers or logos that are mounted directly on the wall with lighting within the letter, number or logo so that they reflect off of the wall, i.e. reverse lighting.

## **Roof sign**

A sign erected over or on, and wholly or partially dependent upon, the roof of any building for support, or attached to the roof in any way.

## **Snipe sign**

A sign that is tacked, nailed, posted, pasted, glued, or otherwise attached to trees, poles, stakes, fences, or other objects.

## **Special event sign**

A temporary or banner sign that carries a message regarding a special event or activity for which a special event permit or seasonal sales permit is required and has been obtained.

## **Structure (Sign)**

A supporting structure erected or intended for the purpose of identification, with or without a sign thereon, situated upon or attached to the premises, upon which any sign may be fastened, affixed, displayed, or applied; however, this definition shall not include a building or fence.

## **Suspended signs**

A sign that is suspended from the underside of a horizontal plane surface and supported by same surface.

## **Temporary sign**

Any sign to be displayed for a limited period of time.

## **Vehicle sign**

Any sign attached, either permanently or temporarily, to any type of vehicle.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **V-shaped point of sale sign**

A point of sale sign with two sign faces, which is constructed of solid materials in the form of a “V”.

### **Wall sign**

Any sign painted on or attached to and erected parallel to the face of, or erected and confined within the limits of, the outside wall of any building and supported by such wall or building.

### **Window sign**

A sign located on the inside of a window or within a building or other enclosed structure, where the sign face is visible and legible from the exterior through a window or other opening.

### **Yard sale signs**

Signs advertising yard or garage sales.

### **Single-family**

A building designed exclusively for occupancy by one family with cooking and sleeping areas.

### **Single-use development**

A tract of land, building, or project area developed with one primary use category, such as residential; commercial and retail; office; institutional; or public.

### **Site**

A parcel of land which is to be developed as a single unit, subdivision, or project.

### **Site plan**

A document or group of documents containing sketches, text, drawings, maps, photographs, and other material intended to present and explain certain elements of a proposed development, including physical design, siting of buildings and structures, lighting, signs, interior vehicular and pedestrian access, the provision of improvements, landscaping and open space and the interrelationship of these elements.

### **Special event**

Circuses, fairs, carnivals, festivals, or other types of events that (1) run for one day or longer, (2) are intended to or likely to attract substantial crowds, and (3) are unlike

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

the customary or usual activities generally associated with the property where the special event is to be located.

### **Start of construction**

For other than new construction or substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

### **Story**

That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space between such floor and the ceiling above it. A basement shall be counted as a story if its ceiling is over five feet above the average level of the finished ground surface adjoining the exterior walls of such building, or if it is occupied for business or dwelling purposes.

### **Street**

A public or private right-of-way used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform. The dedication of half-streets at the perimeter of a new subdivision is prohibited. If circumstances render this impracticable, adequate provision for the dedication on the remaining half shall be required.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Structure**

Anything constructed, installed, or portable, the use of which requires a location on a parcel of land. It includes a movable structure while it is located on land which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently. "Structure" also includes fences, billboards, swimming pools, poles, pipelines, transmission lines, tracks, and advertising signs.

For floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

## **Structural alterations**

Any change, except for repair, or replacement of the structural members of a building, including but not limited to, bearing walls, column, beams or girders, but where no additional facilities of floor space are added thereto.

## **Subdivision**

The division of any tract or parcel of land into three (3) or more parcels.

## **Substantial damage**

Damage of any origin sustained by a structure during a five-year period whereby the cumulative cost of restoring the structure to its before damaged condition would equal or exceed 44 percent of the market value of the structure before the damage occurred. This term also includes repetitive loss structures. See definition of substantial improvement for an explanation of the procedure to be utilized for the purpose of calculating substantial damage.

## **Substantial improvement**

Any combination of reconstruction, rehabilitation, addition, or other improvement of a structure taking place during a five-year period, the cumulative cost of which equals or exceeds 44 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions. For the purposes of calculating

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

substantial improvements and/or substantial damage, the following procedure shall be utilized:

(a) The costs of the improvements or repairs for a project shall be obtained from one of the following sources:

(1) Detailed cost estimate of the improvements or repairs from the licensed general contractor of record.

(2) A cost estimate prepared using professional construction estimation software, such as R.S. Means or the Federal Emergency Management Agency's substantial damage estimation program, as prepared by a licensed architect or engineer.

(b) Any one of the following sources will be considered acceptable estimates of market value:

(1) An independent appraisal by a professional appraiser licensed by the State of Florida. The appraisal must exclude the value of the land and not use the "income capitalization approach" which bases value on the use of the property, not the structure.

(2) Detailed estimates of the structure's actual cash value, which shall equal the replacement cost of the building, minus depreciation percentage based on age and condition.

(3) Property appraisals used for tax assessment purposes with an adjustment recommended by the Miami-Dade County Property Appraiser to reflect market conditions (adjusted assessed value).

(c) For structures in which the substantial improvement or substantial damage percentage is greater than or equal to 30 percent, a more precise market value estimate may be required.

### **Sustainable**

The finite capacity of any place to support human activities, given a set of impacts that those activities have on the place. Once capacity is reached, the impacts of additional growth or activities harm the integrity of the place and impair its ability to function as intended.



# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **T**

### **Telecommunications**

See Wireless Communications.

### **Temporary event**

An event lasting not more than two (2) consecutive weeks during one (1) calendar year.

### **Temporary conditional use permit**

A permit that is for a special purpose, granted to a purchaser of property that is the subject of an existing special use permit, for a limited period of time and under the same conditions and restrictions set out in the original conditional use permit.

### **Townhouse**

A single-family building in a row of at least 3 such units in which each unit has its own front and rear yard and access to the outside; no unit is located over another unit; and each unit is separated from any other unit by one or more vertical common firewalls.

### **Trailer**

A vehicle without motive power, designed to be towed by a passenger automobile but not designed for human occupancy and which may include a utility trailer, boat trailer, horse trailer, or snowmobile trailer.

### **Transit stop**

A designated location that provides passengers access to the transit system and/or a point of transfer between transit routes.

### **Trees; large, medium and small**

Tree height categories where a Large Tree shall grow to a minimum height of 40 feet; a Medium Tree to a minimum height of 30 feet; and a Small Tree to a minimum height of 20 feet.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## U

### **Urban sprawl**

Urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low-intensity or low-density urban uses, and which are characterized by one or more of the following conditions: (a) The premature or poorly planned conversion of rural land to other uses; (b) The creation of areas of urban development or uses which are not functionally related to land uses which predominate the adjacent area; or (c) The creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided. Urban sprawl is typically manifested in one or more of the following land use or development patterns: Leapfrog or scattered development; ribbon or strip commercial or other development; or large expanses of predominantly low-intensity, low-density, or single-use development.

## V

### **Variance**

A grant of relief from the requirements of this code.

### **Vehicle service center**

A structure designed or used for the retail sale of fuels, lubricants, air, water and other operating commodities for vehicles and including customary space and facilities for the installation of such commodities on or in such vehicles, but not including major or minor service.

### **Violation**

The failure of a structure or other development to be fully compliant with the requirements of this Code.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **W**

### **Water use**

A use that cannot exist in another location and is dependent on the water by reason of the intrinsic nature of its operations, such as marinas, piers, and docks.

### **Whip Antenna**

A cylindrical Antenna that transmits signals in 360 degrees.

### **Wireless Telecommunications**

#### **Alternative Tower Structure**

A design mounting structure that camouflages or conceals the presence of an antenna or telecommunications tower, for example, flag poles, manmade trees, clock towers, bell steeples, light poles, utility poles and similar alternative designs.

#### **Antenna**

A transmitting and/or receiving device mounted on a telecommunications tower, building or structure and used in wireless telecommunications services that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communications signals and other communications signals including directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips, but excluding radar antennas, amateur radio antennas and satellite earth stations.

#### **Array**

A group of up to twelve (12) Antennas that are either (i) mounted or side mounted on the rooftop of a building or rooftop structure(s); or (ii) directly or indirectly mounted on a telecommunications tower.

#### **Backhaul network**

The lines that connect personal wireless service facilities to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Broadcasting facility**

Any telecommunications tower or Antenna built primarily for the purpose of broadcasting AM, FM or television signals.

## **Camouflaged facility**

A facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure in a manner that makes it not readily identifiable as a wireless communications facility. A camouflaged facility may or may not have a secondary function (e.g., bell tower, spire, flag pole, etc.). This term shall be synonymous with "stealth facility."

## **Collocation**

The situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent Antenna. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the Antennas.

## **Commercial mobile radio services**

Per Section 704 of the Telecommunications Act of 1996, any of several technologies using radio signals at various frequencies to send and receive voice, data and video.

## **Equipment facility**

A room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for a telecommunications tower or Antenna. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

## **Existing structure**

For the purposes of wireless telecommunications, a structure that exists at the time an application for permission to place an Antenna on a structure is filed with the Town. The term includes any structure that can structurally support the attachment of an Antenna in compliance with applicable codes.

## **Guyed tower**

A telecommunications tower that is supported, in whole or in part, by guy wires and ground anchors.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Lattice tower**

A telecommunications tower that is constructed to be self-supporting by lattice type supports and without the use of guy wires or other supports.

## **Microcell facility**

A telecommunications facility consisting of an antenna and related equipment which is located either on a telecommunications tower or affixed to a structure in some fashion for the provision of wireless services.

## **Microwave dish antenna**

A dish-like antenna used to link telecommunications sites together by wireless transmission and/or receipt of voice or data.

## **Monopole tower**

A telecommunications tower consisting of a single pole or spire self-supported on a permanent foundation, constructed without guy wires, ground anchors, or other supports.

## **Personal wireless services**

Commercial Mobile Radio Services, unlicensed wireless services, and common Carrier wireless exchange access services, as defined under federal law, 47 U.S.C. §332(c)(7)(C), or as this definition may be amended from time to time, and includes but is not limited to, cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, and paging service. Personal Wireless Services shall not be considered as Essential Services, public safety telecommunications, public utilities or private utilities.

## **Pre-existing telecommunications tower**

A telecommunications tower for which a building permit has been properly issued prior to the effective date of this Code, including permitted telecommunications towers that have not yet been constructed so long as such approval is current and not expired.

## **Preferred zoning districts**

The zoning districts within this Code in which the Town provides a preference for the installation of Wireless Communications Facilities.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Public safety telecommunications**

Any and all wireless communications to and from police, fire, and other emergency services operating within the Town.

## **Search Area**

The geographic area, in which a wireless communications facility must be located in order to provide FCC required coverage, as certified through an affidavit by a Radio Frequency engineer as to radio frequency waves or other such appropriate technical expert.

## **Self-Support Tower**

*See Lattice Towers.*

## **Service Provider**

Any person or business entity wishing to locate a telecommunications tower or antenna within the Town limits to provide Personal Wireless Services.

## **State of the Art**

Existing technology where the level of facilities, technical performance, capacity, equipment, components and Personal Wireless Service is equal to that developed and demonstrated to be as technologically advanced and generally available for comparable service areas in South Florida.

## **Stealth facility or tower or stealth**

Any wireless communications facility or tower that is designed to blend into the surrounding environment. Examples of such facilities would include, but are not limited to, architecturally screened roof mounted antenna, building-mounted antenna painted to match the existing structure, antenna integrated into architectural elements, alternative tower structures or other similar structures.

## **Telecommunications Act**

The Telecommunications Act of 1996, Pub. L No. 104-104, codified at 47 U.S.C., and as may be amended from time to time.

# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Telecommunications services**

The offering of telecommunication (or the transmission, between or among points, specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received), for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Personal wireless telecommunications services shall not be considered as Essential Services, public utilities or private utilities.

## **Telecommunications tower or tower**

Any structure, and support thereto, designed and constructed primarily for the purpose of supporting one or more Antennas intended for transmitting or receiving Personal Wireless Services, telephone, radio and similar communication purposes, including Alternative Tower Structure, Lattice, Stealth, Monopole, and Guyed Towers. The term includes radio and television transmission telecommunications towers, microwave telecommunications towers, common-Carrier telecommunications towers, and cellular telephone telecommunications towers, among others. Poles are only a support structure and are not a telecommunications tower.

## **Wireless Communications Facility**

Any equipment or facility used to provide Personal Wireless Service and may include, but is not limited to, Antennas, Towers, Equipment Facility, cabling, Antenna brackets, and other such equipment. Placing a Wireless Communications Facility on an Existing Structure does not cause the Existing Structure to become a Wireless Communications Facility. It also means Personal Wireless Services facilities, as defined under federal law, 47 U.S.C. §332(c)(7)(C), as this definition may be amended from time to time, and includes, but is not limited to, Antennas and radio-transmitting Telecommunications Towers, and associated facilities used to transmit telecommunications signals. Poles are only a support structure and are not a Wireless Communications Facility. An open video system is not a Wireless Communications Facility to the extent that it provides video services; a cable system is not a Wireless Communications Facility to the extent that it provides cable service.

## TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

### **Y**

#### **Yard**

Any open space located on the same lot with a building, unoccupied and unobstructed from the ground up, except for accessory buildings, or such projections as are expressly permitted in these land use regulations. The minimum depth or width of a yard shall be measured by the horizontal distance between the lot line and the nearest point of the foundation wall of the main building.

#### **Yard; front**

A yard extending along the full width of a front lot line between side lot lines and from the front lot line to the front building line in depth. Front yard depth shall be measured at right angles to the front line of the lot.

#### **Yard; rear**

A yard extending across the full width of the lot and lying between the rear lot line and the nearest line of the building. Rear yard depth shall be measured at right angles to the rear line of the lot.

#### **Yard; Interior side**

A yard lying between the side line of the lot and the nearest line of the building and extending from the front yard to the rear yard, or in the absence of either of such front or rear yards, to the front or rear lot lines. Side yard width shall be measured at right angles to side lines of the lot.

#### **Yard; side street**

The area extending between the front yard and the rear yard or rear street yard and situated between the side street lot line and the face of the principal building which is parallel to, or most nearly parallel to, the side street lot line.

### **Z**

#### **Zero lot line**

The location of a building on a lot in such a manner that one or more of the building's sides rests directly on a lot line.



# TOWN OF CUTLER BAY – ADOPTED LAND DEVELOPMENT REGULATIONS

## **Zoning code**

An ordinance enacted by the Town Council pursuant to state law that sets forth regulations and standards relating to the nature and extent of uses of land and structures, which is consistent with the growth management plan of the town, which includes a zoning map, and complies with the provisions of the State of Florida.

## **Zoning district**

Any district delineated on the official zoning district map under the terms and provisions of this code, which may be amended from time to time, for which regulations governing the area, height, use of buildings, or use of land, and other regulations relating to development or maintenance of existing uses or structures, are uniform.

## **Zoning map**

The map and any amendments thereto designating the zoning districts, incorporated into this ordinance by reference.

## **Zoning permit**

A document signed by the zoning officer, as required in this chapter, as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion, or installation of a structure or building, which document acknowledges that such use, structure, or building complies with the provisions of this Chapter or an authorized variance there from.

# **EXHIBIT I**

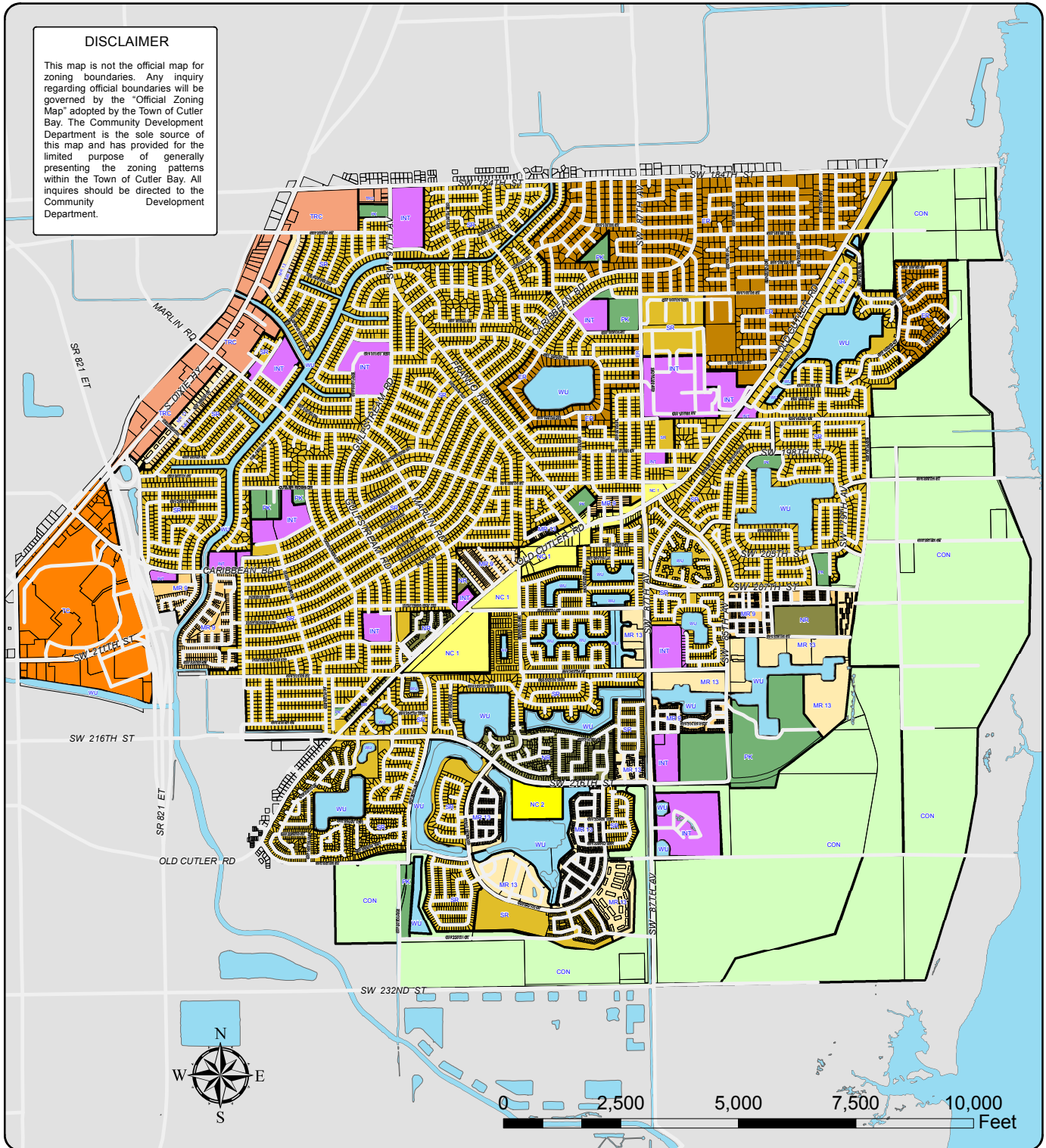
## **TOWN OF CUTLER BAY ZONING MAP**

# Town of Cutler Bay

## Zoning Map

### DISCLAIMER

This map is not the official map for zoning boundaries. Any inquiry regarding official boundaries will be governed by the "Official Zoning Map" adopted by the Town of Cutler Bay. The Community Development Department is the sole source of this map and has provided for the limited purpose of generally presenting the zoning patterns within the Town of Cutler Bay. All inquiries should be directed to the Community Development Department.



### LEGEND

<b>ER</b>	Estate Residential, 1 Dwelling Unit/15,000 sq. ft.	<b>INT</b>	Institutional
<b>SR</b>	Single-Family Residential, 1 Dwelling Unit/7,500 sq. ft.	<b>PK</b>	Parks
<b>MR 9</b>	Multi-Family, 9 Dwelling Units/net acre	<b>CON</b>	Conservation
<b>MR 13</b>	Multi-Family, 13 Dwelling Units/net acre	<b>WU</b>	Water Use
<b>NR</b>	Neighborhood Residential, 5 Dwelling Units/net acre	<b>TRC</b>	Transit Corridor
		<b>TC</b>	Town Center
		<b>NC 1</b>	Neighborhood Center 1
		<b>NC 2</b>	Neighborhood Center 2



June 20th, 2012